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# HISTORY OF DHARMAŚĀSTRA

(ANCIENT AND MEDIEVAL  
RELIGIOUS AND CIVIL LAW)

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BY

MAHĀMAHOPĀDHYĀYA PANDURANG VAMAN KANE, M.A., LL.M.,  
ADVOCATE, HIGH COURT, BOMBAY; SENIOR ADVOCATE,  
FEDERAL COURT OF INDIA; FELLOW AND VICE-  
PRESIDENT OF THE BOMBAY ASIATIC SOCIETY,  
AUTHOR OF "HISTORY OF SANSKRIT  
POETICS", ETC.

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PREFACE

The second volume of the History of Dharmasāstra was published in the third quarter of 1941. In the Preface to that volume I held forth hopes that the next volume dealing with the remaining subjects comprised in Dharmasāstra might be placed before scholars in about three years thereafter. The Great War was then being fought in Europe and it was generally believed that India would remain free from the fear of actual invasion. But such fond hopes were shattered by the sudden attack on Pearl Harbour by Japanese bombers on 7th December 1941. Japan gained rapid and phenomenal victories and within about three months from the attack on Pearl Harbour vast territories from the Philippines to Burma fell into the hands of the victors. Calcutta and Trincomalee were bombed. Serious fears were entertained about an invasion of the mainland of India by land, sea and air. There was great panic in such coastal cities as Madras, Bombay and Karachi. The matters uppermost in the minds of Government officials and the members of the public were A. R. P. measures, the recruiting of men for the army, navy and air force and the removal of families and valuables to places of safety in the interior. Important and rare books from the libraries of the Bombay Asiatic Society and of the University of Bombay were taken to distant places for reasons of security. During almost the whole of 1942 it was very difficult for me to work on the preparation of the third volume in the midst of a general atmosphere of panic caused by the fear of invasion and the removal of valuable reference books from Bombay. Owing to the war there has been great scarcity of paper and printing also has become very costly. I decided upon writing only on a few of the several subjects that remained to be dealt with and chose Rājadharmā, Vyavahāra and Sadācāra, the treatment of which is now placed before the public. Scarcity of paper and labour is responsible for the fact that this third volume has been in the press for nearly three years. The present volume increased in bulk beyond expectation. The fourth and last volume will deal with the following subjects: Pāṭaka, karmavipākā and prayasaitiā; antyeṣṭi, śauca and śrāddha; tithiā; vrata; kālā and muhūrta; śanti; Paurāṇa dharmā; the influence of the Pārvamīmāṃsā and other śāstras on dharmasāstra; the religious and philosophical background of dharmasāstra; the essentials of our culture, its future, the coming



social and other trends, and their impact on the dogmas and ideals of Dharmasāstra. I am personally anxious to finish all the remaining work as early as possible. But looking to my age (I am nearly 67 now), to my ailments and to the number of subjects that remain to be dealt with, it is impossible for me to say when the next and last volume may be published. This volume also is full of quotations, refers to many inscriptions, judicial decisions and legislative enactments. The reasons for this have been stated at length in the Preface to the second volume and I do not desire to repeat them here. In the general index to the second volume full references to works like the *Manusmṛiti* were not given, because such works were quoted on almost every page. But some critics found fault with this; therefore in the index to this volume full references to all works are inserted.

All that now remains is the pleasant duty of acknowledging my obligations to others. Bloomfield's *Vedic Concordance*, the *Vedic Index* of Professors Macdonell and Keith and several volumes of the *Sacred Books of the East* have been very useful in preparing this volume as in the case of the preceding one. I wish to mention specially the debt I owe to the late Mahamahopādhyāya Kamalakṛṣṇa Smṛtītrīṭha for his editorial work on twelve volumes on the different branches of dharmasāstra, which have been of great use to me in writing all the volumes of my *History* viz. *Hāsalatā*, *Vivādaratnakara*, *Gṛhastharatnakara*, *Kṛtyaratnakara*, *Tīrthachintāmaṇi*, *Varṣakriyākaumudī*, *Dānakriyākaumudī*, *Śrāddhakriyākaumudī*, *Śādhikākaumudī*, *Dandavivēka*, *Rājadharmakāustubha* and *Agastya-smṛiti*. I am highly obliged to Paramahansa Śrāṇi Kavalānanda Sarasvatī of Wai for frequent help and guidance in solving some intricate problems of Dharmasāstra, to Prof. N. A. Gore, M. A. of Poona for help in the careful correction of proofs, to Tarkatīrtha Raghunāthasāstri Kojke of Lonavla and Mr. N. G. Chapekar, B. A., LL. B. (retired P. C. Sub-judge), of Badlapur for reading through the whole volume and suggesting some additions and corrections.

Assistance in various ways during the progress of the work for the last four years was very kindly rendered by a host of friends and acquaintances, among whom I should like to make special mention of Prof. H. D. Velankar, Dr. R. N. Dandekar, Dr. S. K. Belvalkar, Rao Bahadur Prof. Rangaswami Aiyangar, Dr. A. S. Alikar, Mr. P. K. Gode, Dr. Raghavan, Mr. S. N. Joshi of Bhārata-kīlāsa-saṁśodhaka-maṇḍala at Poona, Mr. Bhabatosh



Bhattacharya (son of M. M. Kamalakṣṇa Sūritīrtha), Mr. S. L. Katre of Ujjain, Prof. A. M. Paramasivanandan of Pachaiappa College at Madras, the late Pandit Rangacarya Raddi. Thanks are due to all these and many others for help and interest in this volume. It need not be expressly stated that I alone am responsible for the views and mistakes contained in this volume. I sincerely thank the Manager of the Aryabhushan Press, Poona, for carrying out the work of printing with care and promptitude in spite of difficulties caused by war conditions and paper and labour shortage.

In a work bristling with thousands of quotations and references it is likely that many slips have escaped attention. The indulgence of the reader is sought for forgiveness in the matter of several misprints in the footnotes caused by loss or displacement of the parts of letters in the process of printing.

BOMBAY, }  
1st October, 1946. }

P. V. KANE



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## LIST OF ABBREVIATIONS EMPLOYED

- A. I. R. = All India Reporter of Nagpur  
 Alt. Br. = Altareya Brahmapa  
 All. = Indian Law Reports, Allahabad Series  
 A. L. J. = Allahabad Law Journal  
 Ap. = Āpastamba (generally the author of the Dharmasūtra is meant)  
 Ap. Dh. S. = Āpastamba-dharmasūtra  
 Ap. M. P. = Āpastamba-mantra-pāṭha  
 A. S. W. I. = Archaeological survey of Western India  
 Āsv. Gṛ. = Āsvalāyana-gṛhyasūtra  
 Baud. Dh. S. = Baudhāyana-dharmasūtra  
 B. I. = Bibliotheca Indica series, Calcutta  
 Bom. = I. L. Reports, Bombay Series  
 Bom. G. = Bombay Gazetteer volumes  
 Bom. H. C. R. = Bombay High Court Reports ( vol. I-XII )  
 Bom. L. R. = Bombay Law Reporter ( edited by Ratanlal and Dhirajlal )  
 B. O. R. I. } = Bhandarkar Oriental Research Insti-  
 B. O. R. Institute } tute, Poona  
 Br. = Smṛti of Bṛhaspati  
 Bṛ. Up. = Bṛhadāraṇyaka Upaniṣad  
 B. R. W. W. = Beal's Buddhist Records of the Western world  
 Cal. = Indian Law Reports, Calcutta Series  
 Catur. = Caturvīṃśatimata  
 Chān. Up. = Chāndogya Upaniṣad  
 C. I. I. or } = Corpus Inscriptionum Indicarum ( vol. I  
 Corpus I. I. } relating to Inscriptions of the times of Aśoka,  
 vol. II relating to Kusana Inscriptions and  
 vol. III relating to Gupta Inscriptions )  
 C. L. J. = Calcutta Law Journal  
 Com. = Commentary or Commentator (according to context)  
 Cr. ed. = Critical edition ( of the Mahābhārata, Poona )  
 C. W. N. = Calcutta Weekly Notes ( Law Reports )  
 D. B. = The Dāyabhāga of Jimūtavāhana  
 D. C. = Dattaka-candrika



D. C. = Deccan College Collection (when mss. are concerned)

Dh. S. = Dharmasūtra

D. K. S. = Dāyākramasangraha of Śrīkrṣṇa

D. N. = Dattakamīnīmāṃsā of Nandapāpīta

E. C. = Epigraphia Carnatica

E. I. = Epigraphia Indica

F. B. = Full Bench (decision)

Fick } = The Social organization in North-east India in  
Buddha's time (translated from German by  
Dr. Shishirkumar Mitra, 1920)

Gaut. = Gautama-dharmasūtra

Gr. R. = Gṛhastharatnākara of Candēśvara

H. D. } = History of Dharmasūtra  
H. Dh. }

Hir. gr. = Hiranyakeśi-grhya-sūtra

I. A. = Indian Antiquary

I. A. } = Indian Appeals (Law Reports). The context  
will always indicate whether I. A. stands for the  
volumes of the Indian Antiquary or for the Law  
Reports, Indian Appeals

I. H. Q. = Indian Historical Quarterly

I. L. R. = Indian Law Reports

Ins. = Inscription or Inscriptions

I. P. C. = Indian Penal Code

Jal. = Jaimini's Pūrvamīmāṃsāsūtra

J. A. O. S. = Journal of the American Oriental Society

J. A. S. B. = Journal of the Asiatic Society of Bengal

J. B. O. R. S. = Journal of the Bihar and Orissa Research  
Society

J. R. A. S. = Journal of the Royal Asiatic Society (London)

Kām. = Kāmandakīya-nīti-sāra

Kāt. = Smṛti of Kātyāyana reconstructed by P. V. Kane

Kaut. = Kautilya's Arthasāstra

K. V. N. = Kalivarjyavinirnaya (ms)

L. R. I. A. = Law Reports, Indian Appeals (Privy Council)

Mad. = Indian Law Reports, Madras Series

Mark. = Mārkaṇḍeyapurāṇa

Medh. = Medhātithi, the oldest commentator of Manusmṛiti



- Mit. = Mitākṣarā on the Yājñavalkya-smṛti  
 M. L. J. = Madras Law Journal  
 Moo. I. A. = Moore's Indian Appeals ( Reports  
 N. or n. = footnote  
 Nār. = Nārada-smṛti  
 Nir. S. = Nīrṇayasindhu  
 Nitīsāra = Kāmandakīya-nīti-sāra  
 N. I. A. = New Indian Antiquary, Poona  
 Pāṇ. = Pāṇini's Aṣṭādhyāyī  
 Pār. Gr. = Pārasara-grhya-sūtra  
 Par. M. = Parāsāra-Mādhaviya  
 Patna = Indian Law Reports, Patna Series  
 P. C. = Privy Council  
 P. J. = Printed Judgments of the Bombay High Court  
 Q. or q. = Quoted  
 Raghu. = Raghuvamśa  
 R. D. K.                    }   Rājadharmakāṇḍa of Kalpataru ( on p. 43  
 Raja Dh. K.               } = R. D. K. by mistake stands for Rājadharmas-  
                                       }   kaustubha )  
 Rājadharmā-K. = Rājadharmakaustubha of Anantadeva  
 Raja N. P. }   Rajamitiprakāśa ( a part of the Viramītrodaya  
 R. N. P.     } = of Mītramīśra )  
 Rajat. = Rājatarāṅgiṇī  
 Rg. = Rgvēda  
 Sam. K. = Samskāra-kaustubha  
 Sam. Pr. = Samskāraprakāśa ( a part of the Viramītrodaya  
                                       of Mītramīśra )  
 Sāṅ. Gr. = Śāṅkhayana-grhya-sūtra  
 Śat. Br. = Śatapatha-brāhmaṇa  
 S. B. E. = Sacred Books of the East ( series edited by Max  
                                       Müller )  
 S. I. I. = South Indian Inscriptions  
 Sm. O. = Smṛticandrikā  
 Sm. Kau. = Smṛti-kaustubha  
 Sm. M. = Smṛtimuktāphalā  
 Śr. = Śrautasūtra  
 S. V. = Sarasvatīvilāsa

Śakra = Sukranitisāra

Tal. Ar. = Taittiriya Aranyaka

Tal. Br. = Taittiriya Brāhmaṇa

Tal. S. = Taittiriya Saṁhitā

Tal. Up. = Taittiriya Upaniṣad

T. L. L. = Tagore Law Lectures

Tr. = Translation or translated

Vaj. S. = Vajasaneya-saṁhitā

Vas. = Vasiṣṭha-dharma-sūtra

V. C. = Vivāda-cintāmaṇi

V. M. } = Vyavahāra-mātrkā of Jimūtavāhana (except  
V. Mātrkā } on p. 709).

V. Mayūkha = Vyavahāramayūkha (In a very few places  
such as on p. 709 through oversight V. M.  
stands for V. Mayūkha)

V. Nir. } = Vyavahāranirnaya of Varadarāja  
V. Nirṇaya }

V. P. = Vyavahāraprakāśa (a part of the Virāmitrodaya  
of Mitraniśa)

V. R. = Vivādaratnākara of Candesvara

Viṣṇu } = Viṣṇudharmasūtra  
Viṣṇu Dh. S. }

V. T. = Vivādatāṇḍava of Kamalākara

Vy. Nir. } = Vyavahāranirnaya of Varadarāja  
Vy. Nirṇaya }

Yāj. = Yājñavalkyasmṛti

अथर्व = अथर्ववेद

अथर्वशास्त्र = अथर्ववेद शास्त्र

आप. प. सू. = आपस्तम्बप्रश्नसूत्र

आप. म. प. = आपस्तम्बमन्व्यपि

इ. = इन्द्रेय

ऐ. वा. = ऐतरेयब्राह्मण

कालिकार्थवि. = कालिकार्थवित्तिर्णय (ms)

कात्या. = कात्यायनस्मृतिसारोद्धार

कात्या. श्रौ. = कात्यायनश्रौतसूत्र

काम } = कामन्दकीयनीतिसार  
कामन्दक }

कुत्तर. = कुत्तरलोकर



की. } = कीटिलिय अथेशास्त्र  
कीटिलिय }

गृह. र. = गृहस्य ररनाभर

गी. = गीतमधमसूत्र

चतुर्षि. = चतुर्विंशतिनत

छा. उ. = छान्दोग्योपनिषद्

जे. = जैमिनीयपूर्वमीमांसासूत्र

जे. न्या. मा. = जैमिनीयन्यायमाताभिरुक्त

ते. आ. = तैत्तिरीयारण्यक

ते. आ. = तैत्तिरीयब्राह्मण

ते. सं. = तैत्तिरीयसंहिता

दत्त. अ. = दत्तकनन्दिका

दत्त. मी. = दत्तकमीमांसा

नारद. = नारदस्मृति

नीतिवा. } = नीतिवाक्यामृत  
नीतिवाक्या. }

नीतिसार = कामन्दकीयनीतिसार

परा. मा. = पराशरमाध्वजीय

पा. = पाणिनि's अष्टाध्यायी

कुप. } = कुपभूषण  
कुपम्. }

बृह. = बृहस्पतिस्मृति (as quoted in digests)

बृह. उप. = बृहदारण्यकोपनिषद्

बृहत्सं. = बृहत्संहिता

बी. य. } = बीषायननभमसूत्र  
बी. य. सू. }

बी. भी. = बीषायननश्रौतसूत्र

मद. पा. = मदनपारिजात

मनु. = मनुस्मृति

मिता. = मितालरायिका of विज्ञानेश्वर

मीमांसाकौ. } = मीमांसाकौस्तुभ of नन्ददेव  
मी. कौ. }

मेधा. = मेधातिथि's साध्या on मनुस्मृति

या. or याज्ञ. = याज्ञवल्क्यस्मृति

रा. य. की. or राजय. की. or राजयर्मका. = राजयर्मकोस्तुभ

रा. नो. य. or राजनो. य. or राजनीति. य. = राजनीतिप्रकाश of मित्रमिश्र

राज. र. or राजनीतिर. = राजनीतिरत्नाकर of नन्देश्वर



वाच. सं. = वाचसनेयशेहिता

वि. वि. = विवादानिन्तामणि

वि. ता. = विवादताण्डव of कमलाकर

वि. २. = विवादरत्नाकर

व्यव. त. = व्यवहारतत्त्व of रघुनन्दन

व्य. नि. or व्यव. नि. = व्यवहारनिर्णय

व्य. प्र. = व्यवहारप्रकाश of मित्रामित्र

व्य. म. or व्यव. मयूत = व्यवहारमयूत

व्य. मा. = व्यवहारमातृका

व्यव. सा. = व्यवहारसार

अक्र.  
अक्रनी. } = अक्रनीतिसार  
अक्रनीति.

सं. बौ. = संस्कारबौद्ध

सत्या. धौ. = सत्याधौतसूत्र

स. वि. = सत्यविवेचन

स्मृतिच. = स्मृतिचन्द्रिका

स्मृतिमु. = स्मृतिमुक्तफल

## CHRONOLOGICAL TABLE.

*( of some important works and authors referred to in this volume )*

N. B.—Some dates, particularly of ancient works, are more or less conjectural.

- 4000 B. C. — 1000 B. C. — The period of the Vedic Samhitās, Brāhmanas and Upaniṣads. Some hymns of the R̥gveda, the Taittirīya Samhitā and Brāhmaṇa and the Atharvaveda may possibly go back to a period earlier than even 4000 B. C. and some of the Upaniṣads ( even from among those that are regarded as the earliest ones ) may be later than 1000 B. C.
- 800 B. C. — 500 B. C. — The Nirukta.
- 800 B. C. — 400 B. C. — The principal erauta sūtras ( of Āpastamba, Āśvalāyana, Baudhāyana, Kātyāyana, Satyāsajha and others ) and some of the Gr̥hyasūtras ( such as those of Āpastamba and Āśvalāyana ).
- 600 B. C. — 300 B. C. — The dharmasūtras of Gautama, Āpastamba, Baudhāyana, Vasistha and the Gr̥hyasūtras of Parāskara and a few others.
- 600 B. C. — 300 B. C. — Pāṇini.
- 500 B. C. — 200 B. C. — Jaimini's Pūrvamīmāṃsāsūtra.
- 300 B. C. — Vararuci Kātyāyana, author of Vārtikas on Pāṇini.
- 300 B. C. — 100 A. D. — Arthashastra of Kauṭilya.
- 150 B. C. — The Mahābhāṣya of Patañjali.
- 200 B. C. — 100 A. D. — Manusmṛti.
- 100 A. D. — 300 A. D. — Yājñavalkyasmṛti.
- 100 A. D. — 300 A. D. — Viṣṇudharmasūtra.
- 100 A. D. — 400 A. D. — Nārada-smṛti.
- 200 A. D. — 500 A. D. — Sabara, com. of Jaimini.
- 300 A. D. — 500 A. D. — Bṛhaspatismṛti on Vyavahāra ( not yet found. Extracts translated in S. B. E. vol. 33 ).
- 300 A. D. — 600 A. D. — Some of the extant Purāṇas, such as Vāyu, Viṣṇu, Mārkaṇḍeya, Matsya, Kūrma.



- 400 A. D. — 600 A. D. — *Kaṭyāyanasmṛti* on *Vyavahāra* (not yet found. Extracts collected by me and translated in English).
- 400 A. D. — 600 A. D. — *Kaṁandakiyanitisāra*.
- 505 A. D. — 587 A. D. — *Varāhamihira*, author of *Bṛhatsamhitā*, *Bṛhajjātaka*, *Pañcasiddhāntikā* and other works.
- 600 A. D. — 650 A. D. — *Bāṇa*, author of the *Kādambarī* and the *Harsacarita*.
- 650 A. D. — 750 A. D. — *Kumārīlabhaṭṭa*, author of *Śloka-vārtika*, *Tantravārtika* and *Tup-tikā*.
- 600 A. D. — 900 A. D. — Most of the *smṛtis* and some of the *Purāṇas*.
- 788 A. D. — 820 A. D. — *Śaṅkarācārya*, the great *Advaita* philosopher.
- 800 A. D. — 850 A. D. — *Viśvarūpa*, com. of *Yājñavalkyasmṛti*.
- 900 A. D. — *Medhatithi*, com. of *Manusmṛti*.
- 900 A. D. — 1100 A. D. — *Parthasārathīmīśra*, author of *Śāstra-dīpikā*, *Tantraratna*, *Nyāyaratnākara*.
- 966 A. D. — *Utpala*, com. of *Bṛhat-samhitā* and *Bṛhajjātaka*.
- 1000 A. D. — 1055 A. D. — *Dhāreśvara* (Bhoja).
- 1070 A. D. — 1100 A. D. — *Vijñāneśvara*, the author of the *Mitākṣarā* com. on *Yājñavalkya*.
- 1080 — 1140 A. D. — *Govindarāja*, author of a com. on *Manusmṛti*.
- 1100 — 1150 A. D. — *Lakṣmidhara*, author of a large digest called *Kṛtya-kalpataru* or simply *Kalpataru*.
- 1100 — 1150 A. D. — *Jinūtavāhana*, author of *Dāyabhāga*, *Kālaviveka* and *Vyavahāramātrkā*.
- 1114 — 1183 A. D. — *Bhāskarācārya*, author of *Siddhānta-siromani*, of which *Līlāvati* is a part.
- 1125 A. D. — *Aparārka*, author of a com. on the *Yājñavalkyasmṛti*.
- 1127 — 1133 A. D. — *Mānaseollāsa* or *Abhilasitarthacintāmaṇi* of *Śomeśvaradeva*.
- 1150 — 1160 A. D. — *Rājataranginī* of *Kaḷhana*.
- 1150 — 1200 A. D. — *Smṛtyarthasāra* of *Śrīdhara*.



- 1200 — 1225 A. D. — *Smṛticesandrikā* of Devaṇṇabhaṭṭa.
- 1150 — 1300 A. D. — Haradatta, com. on *Gautamadharmasūtra* and *Āpastambadharmasūtra*.
- 1150 — 1300 A. D. — Kullūka, com. of *Manusmṛti*.
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- 1260 — 1270 A. D. — *Caturvargacintāmaṇi* of Hemādri.
- 1290 — 1370 A. D. — Gaṇdeśvara, author of *Rājantīratnākara*, *Vivādaratnākara*, *Gṛhastharatnākara* and other works.
- 1300 — 1380 A. D. — Mādhavācārya, author of *Parāsurama-dharmiya*.
- 1360 — 1390 A. D. — *Madanapārijata* compiled under king Madanapāla.
- 1375 — 1460 A. D. — Śūlapāṇi, author of *Dīpakalikā*, com. on *Yājñavalkya*.
- 1400 — 1500 A. D. — *Nyāyasudhā* of Somaśvara, com. on *Tantravārtika*.
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- 1490 — 1512 — The *Vyavahārasāra* of Dalapati, a part of the *Nṛsiṃhaprasāda*.
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- 1520 — 1575 A. D. — Raghunandana, author of *Dāyatattva*, *Divyatattva*, *Vyavaharatattva* and other *Tattvas*.
- 1560 — 1620 A. D. — Śankarabhaṭṭa, author of *Dvaitanirnaya* or *Dharmadvaitanirnaya*.
- 1590 — 1630 A. D. — Nandapandita, author of the *Dattakamīmāṃsā* and *Vaijyanti*, com. on *Viṣṇudharmasūtra*.
- 1610 — 1640 A. D. — Kamalākaraḥṭṭa, author of *Nirnayasindhu*, *Vivādatāpava*, *Śūdrakamalākara* and other works.

- 1615 — 1645 A. D. — Nilakapthabhatta, author of *Nītinayūka*, *Vyavahāramayūka* and other *Mayūkas*.
- 1615 — 1645 A. D. — Mītramīśra, author of *Vīramitrodaya*, divided into *Rājanītiprakāśa*, *Vyavhāraprakāśa* and other *prakāśas*.
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- 1750 — 1820 A. D. — Bālabhāṭṭa, author of the *Bālabhāṭṭa*, com. on the *Mīśākṣarā*.
- 1790 A. D. — Dharmasindhu of Kāśinātha.
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	5 Patna 646	710n.
	23 Patna 599	576n.
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## ADDITIONS AND CORRECTIONS

(A few misprints due to the loss or displacement of such loose parts as *anastases* have not been specified, since they can be easily detected).

Page	Line or note	
22	n. 24	read विष्णुधर्मसूत्र III. 95 ;
31	n. 41	read क्षान्ति 59 for शान्ति 9
57	n. 70	The verse दुष्टस्य दष्टः &c. occurs also in बराहमिहिर's योगयात्रा 2. 33
57	n. 70	read सर्वकर्मणः
63	l. 3	read 'Śāntiparva ( 56. 45-46 ).
72	l. 31	read ' option for '
143	n. 184	read ' Śābara ' in line 3
147	l. 16	Add ' Br. Śaṁ. 23. 2 is: इस्तविशालं कुण्डकमधिकृत्याम्बुप्रमाणनिर्दिष्टाः । पवासात्पल- मादकर्मणेन मितुषाञ्जलं पतितम् ॥. उपल- explains 'इस्तविशालं कुण्डकं कर्षति देशे संस्थाप्य तत्र बज्जलं पतति तन्मापयेत् । तद्यदि पलशतद्वयं भवति तदा द्वौषो दृष्टः'. On Br. Śaṁ. 21. 32 उपल quotes a verse of 'पराशर' समं विशाङ्गुलनादे दिष्टतुष्काङ्गुलीच्छ्रिते । भाण्डे कर्षति संपूर्णे देवमादकवर्षणम् ॥'. This shows the dimensions of a vessel used as a raingauge.
182	n. 230	read in line 3 राजधर्मको.
183	l. 34	read ' Rājadharmakaustubha '.
183	l. 38	" "
193	n. 250	read संयुतानि कनककरिदुरगं
227	n. 306	add at end ' Compare योगयात्रा 5. 15 'एकतस्र स्रज्जागि निमित्तान्येकतस्र मनसं परिश्रदिः । चेतसोऽस्ति सद्व्यावरणे श्रीमूर्तौऽपि विजयात्रयहेतुः ॥ '
242	l. 14	read ' Manu VIII. 1.' for ' Manu VIII. 1.'

Page	Line or note	
258	n. 335	read in last line स्मृतिच.
265	l. 29	read 'pachā'
379	n. 395	read सन्धेः
382	l. 6	read <i>patram...pralla</i>
405	last line	put a full stop after 'hanged'.
414	n. 669	read कृष्णस्मिन्.
423	n. 690	read शुभेर्न्यवस्था
533	n. 982	should we read वधमकुर्वन् for वधं कुर्वन्?
538	n. 995	read in first line वृत्ते
542	n. 1009	read in second line वृत्तं
570	n. 1069	read पैतामहे
586	n. 1104	read in line 9 च for च.
588	n. 1111	read in line 3 दुर्मोदीत्याह
605	n. 1142	put a full stop after बोधावन in l. 5.
"	"	read in line 9 निरिन्द्रिया ह्यनन्त्राथ
627	n. 1197	read न त्वयात्वे अनुप्रेषा
651	n. 1235	read in line 1 एक एवैरसः and in line 2 वि. र.
659	n. 1248	read मौषपुत्राणां
"	n. 1250	read in line 2 कुर्वन्
677	n. 1277	add at the end 'For the words श्रुतेन जुहोति श्रुतेन व्रतनं कियते' vide शतपथ ब्राह्मण II. 5. 2. 23; vide ते वा. I. 6. 4 for two वेदिस in वरुणधाम and वौ. शो. 5. 5.
695	n. 1321	Add at end 'For अर्थम...वर्हिर्वेदि compare ते. सं. VI. 6. 4 and वौ. शो. सू. 4. 2.
702	l. 27	read '(Śakuntala Act VI).
706	n. 1349	read पत्नीनामशमागित्वम्.
"	l. 15	read 'her deceased sonless and separated husband's wealth'.

Page	Line or note	
751	l. 30	read after 'British rule' the words 'the widows of gotraja sapindas'.
776	n. 1499	read in l. 2 पुत्रलेन
781	n. 1509	read in last line स्वातन्त्र्येण
804	n. 1561	Add at the end 'Recently the Indian Legislature passed Act XIX of 1946 which confers on Hindu married women the rights to separate residence and main- tenance as against the husbands in certain circumstances'.
846	l. 28	read 'mother'
897	n. 1762	read in line 7 'Institute' for 'Society'.
936	last line	read 'naugamanābhavo'.





## RAJADHARMA

### ( GOVERNMENT AND STATECRAFT )

#### CHAPTER I

Rajadharma has been a subject of discussion in works on dharmaśāstra from very ancient times. The Āp. Dh. S. II 2.25.1 says 'The general and special *dharma*s of all varnas have been explained: but now we shall declare the dharmas of a king in particular'. Āp. then states that the king should cause to be built a capital and a palace, the gates of which both should face the south; that the palace should be in the heart of the capital; that in front of the capital there was to be a hall called 'aman-trapa' (hall of invitation); that to the south of the town there was to be an assembly house with doors on the north and south. Āp. requires that in the king's realm no brāhmaṇa should suffer hunger, sickness, cold or heat; Āp. gives regulations about the assembly house and about persons who were to be allowed to engage in gambling; he prescribes that (the exercise in) arms, dancing, singing and music should not go on anywhere except in the houses of the king's servants, that the king was to see that there was no danger from thieves in villages and forests, that the king should donate fields and money to brāhmaṇas according to their worth without detriment to his servants, that the king who meets death in recovering the property of brāhmaṇas and other warlike persons who meet death in fighting for a similar worthy cause reap the merit of a sacrifice (i. e. reach heaven as reward); that the king should appoint in towns and villages officers and their subordinates, who are pure and truthful, for the protection of the subjects against thieves and who are to be made to make good what is stolen; that they are to collect lawful taxes for the king from the people except from learned brāhmaṇas, women of all castes, minors, students staying with teachers and ascetics fulfilling the rules of their order, śūdras who do menial work for the higher castes (such as washing their feet), persons that are blind, deaf or dumb. Āp. then lays down punishments for adultery and rape, for slander and defamation, for manslaughter, for theft and appropriation of another's land, for breach of contract to cultivate the field of another, for a herdsman leaving his herd or negligently allowing



it to perish. He states that if the king does not punish the guilty he incurs sin, that in disputes judges should be men of learning, clever and fulfilling their duties, that witnesses were to tell the truth and were to be punished if they be untruthful. It will be noticed how Āp. briefly covers the whole field of rājadharmā. In the Śāntiparva of the Mahābhārata rājadharmā is dealt with at great length in chapters 56-130 and to some extent in 131-172. The Manusmṛti also states at the beginning of chap. VII (1) that it will expound rājadharma. That great literary activity on the science and art of government went on for many centuries before the Christian era follows from several considerations. The Anuśāsanaparva (chap. 39.8) speaks of the śāstras composed by Brhaspati and Usānas. The Śāntiparva (58.1-3) names as expounders of rājāśāstra Brhaspati, Bharadvāja, Gaurāśiraś, Kāvya, Mahendra, Manu Prācetasā and Viśalakṣa. Śāntiparva (102.31-32) opposes the view of Śambara to that of ācāryas<sup>1</sup>. The Arthasāstra of Kauṭilya mentions five schools (viz. those of the Mānavas, the Bārhaspatyas, the Auśanaseas, the Parāśaras and the Āmbhīyas), seven individual teachers (V. 5, and I 8) only once (viz. Bahudantiputra, Dirgha Cārāyaṇa, Ghoṭamukha, Kapinka Bhāradvāja, Kātyāyana, Kīṇjalka, Piśunaputra,) and several times mentions the views of Bhāradvāja, Kauṇapadanta, Parāśara, Piśuna, Vātavyādhi, Viśalakṣa. Kauṭilya also cites at least 53 times the views of ācāryas, almost in every case for dissent. Śānti 103.44 refers to a Bhāṣya on rājāśāstra. Is it possible to see in this a reference to one out of the bhāṣyakāras indicated in the verse appended at the end of the Kauṭilya or to the Kauṭilya itself? Another fact indicative of the systematization of the science of government is that in the Mahābhārata, the Rāmāyaṇa, Manu and Kauṭilya ideas expressed by numbers had already been stereotyped long before those works were written viz. such as saptaśṅga rājya (State with seven constituent elements), ṣaḍguṇya (the six ways of policy viz. alliance, declaration of war &c.), three śaktis, the four upāyas (sāma, dāna, bheda, danda), aṣṭavarga, and pañcavarga (Manu VII. 155), the 18 and 15 tīrthas (Sabbāparva 5.38)<sup>2</sup>. For detailed information

1. मन्वते कर्षदिवः । तु क्षमा साधयति शम्बरः । असम्भवे तु यदाह मन्वेति यद्वृत्तिर्युगः ॥ मेरुवर्षासप्तवाचारां न च साधुनिर्णयम् । शान्ति 102. 31-32.

2. द्वापयः सप्तवर्गसप्तवर्गं च तत्तत्तः । अष्टवर्गं विद्वन् च विद्वान्निर्णयः साधवः ॥ कुलं विद्वान्निर्णयः दया यद्वृत्तिमन्वदम् । अयोध्याकाण्ड 100. 68-69. द्वावर्गं means the ten upāsana.

about the Rājasastras of Brhaspati, Usanas, Bhāradvāja culled from the Mahābhārata and other ancient works *vide* my paper on them in the Journal of the University of Bombay, vol. XI part 2 pp. 73-83, 1942.

The fulfilment of their duties and responsibilities by rulers was of paramount importance to the stability and orderly development of society and to the happiness of individuals in the State and therefore one often finds that rājadharmā is said to be the root of or the quintessence of all dharmas. Śāntiparva (63.25) states 'know that all dharmas are merged in rājadharmā; that rājadharmas are at the head of all dharmas' and (141.9-10) 'the welfare, good rains, sickness, calamities and death among people owe their origin to the king'. It was the king's duty to see that the people in his kingdom acted according to the rules laid down in the smṛtis for the several varṇas and āśramas, to administer justice and to interfere when his help was sought for by a *paṇḍit* (assembly of learned men) in enforcing the *prāyaścitta* (penance) prescribed for various lapses. *Vide* Gautama X. 7-8, XI. 9-11, Āp. Dh. Ś. II. 5. 10. 13-16<sup>1</sup>, Vasiṣṭha 19. 1-2, Viṣṇu III. 2-3, Nārada (prakīrṇaka, 5-7 and 33-34), Śāntiparva 77.33 and 57.15, Matsyapurāṇa 315.63, Mārkaṇḍeya-purāṇa 27.28 and 28.36 and H. Dh. vol. II p. 965. Therefore it may be said with truth (as done by the Mahābhārata) that rājadharmā was the highest goal of all the world, that it comprehended within itself all rules of *ācāra*, *vyavahāra* (administration of justice) and *prāyaścitta* (penance). It is on account of this all-pervading influence of government or royal power that the Mahābhārata frequently emphasizes that the king is the maker of his age, that it is he who can usher a golden age or an age of strife and misery for the country<sup>2</sup>. The Sukranītisāra (I.

3. एवं धर्मात् राजधर्मेषु सर्वोन्मत्तवर्षस्य संमतीनाञ्चिदोप । ... सर्वा विद्या राज्यधर्मेषु युष्माः सर्वे लोका राजधर्मे मविद्याः । सर्वे धर्मा राजधर्मोपधायाः । शान्तिपर्व 63. 25, 26, 29; राजमूला महाभाग योगक्षेमलुहृदयः । यज्ञास्तु ग्वाध्वश्चैव मरणं च मघानि च ॥ कृतं चेत्ता द्वापरं च कालिद्य मरुतर्षभ । राजमूला इति मतिर्मेव भास्वद्य संशयः ॥ शान्ति 141. 9-10; सर्वस्य जीवतोकर राजधर्मः परावपम् । शान्ति, 56. 3.

4. आप. ध. सू. II. 5. 10. 13-16 तस्य चेच्छास्त्रमतिपथवर्तेत् राजानं समयेत् । राजा दुरोहितं धर्मोपकुलतम् । स बाह्यणाञ्चिदुज्जपाद् । वदविशेषेण वयदास्पदं निदमैश्वर्यं शोभयेत् ।

5. कालो वा कारणं राज्ञो राजा वा कालकारणम् । इति ते संशयो ना भूदाजा कालस्य कारणम् ॥ ज्योति 132. 16 and शान्ति 69. 79; कृतं चेत्ता द्वापरं च कालिद्य मरुतर्षभ । राजदुष्टानि सर्वाणि राजैव युगयुग्यते ॥ ... राजैव कर्ता भूतानां राजैव च विनाशकाः । शान्ति. 91. 6 and 9; तच्च येत्सेवमुद्धत धर्मे राजर्षिमेविते । लोकस्य संस्था म भवेत्सर्वं च ग्वाकुलीमवेत् ॥ शान्ति, 56. 6; युगवर्तको राजा धर्मधर्मशिक्षणात् । युवानां न यजानां न दोषा किन्तु सुपर्य तु ॥ ह्युक्तोक्तिसार IV. I. 60.



59-60) remarks that one should learn from śāstra what are good and evil actions, give up evil deeds and perform good ones and that the king is hence declared to be the cause of (good or evil) times according as he does good or evil acts. Śukra IV. 1, 60 states that the king is the prompter of his age.

Though rājadharmā was thus an integral part of dharmaśāstra and was one of the most important subjects therein, yet apart from the works on dharmaśāstra separate treatises dealing with rājadharmā alone came into existence in very early times. Śāntiparva (chap. 59) states that originally in the Kṛta age there was no king nor punishment, that then *moha* (delusion), greed and lust entered men, that in order to provide against the complete destruction of dharma, Brahṁā composed a work in one hundred thousand chapters on dharma, artha, kāma and mokṣa (verses 30 and 79); that part of this work on Nīti (science of government) was abridged by Śaṅkarā Viśālākṣa (verse 80, and so it was called Viśālākṣa) into 10000 chapters, that Indra studied it and reduced it to 5000 chapters (and the work was called Bāhūdantaka, verse 83), that it was compressed into 3000 chapters by Bṛhaspati (and so was called Bārhaspatya) and that Kāvya (Uśanas) reduced the work to 1000 chapters. The Kāmasūtra (I 5-8) contains a somewhat similar story that Prajāpati composed a work in one hundred thousand chapters, that Manu abridged it as regards dharma, Bṛhaspati as regards *artha* and Nandī abridged in 1000 chapters the science of erotics. The Śāntiparva (69) gives (verses 33-74) a summary of the contents of the work of Brahṁā on rājadharmā which remarkably agrees with the principal topics of the Kauṭīliya.

The Nītiprakāśikā (I. 21-22) states that Brahṁā, Mahesvara, Skanda, Indra, Prācetasā Manu, Bṛhaspati, Śukra, Bhāradvāja, Veda-Vyāsa, Gaurasīras were the expounders of Rājāśāstra, that Brahṁā composed a work on rājāśāstra in 100000 chapters, which was gradually reduced in size by each of the above-mentioned founders until Gaurasīras reduced it to 500 chapters and Vyāsa to 300. The Śukranītisāra (I. 2-4) states that Brahṁā composed nītiśāstra in 100000 verses, which was subsequently abridged by Vasistha and others (including Śukra).

It is interesting to note the names given to the science of government. The most appropriate word is 'rājāśāstra' and it is employed by the Mahābhārata, which speaks of Bṛhaspati, Bhāradvāja and others as 'rājāśāstra-prapetārah' (vide p. 2 above). The Nītiprakāśikā (I. 21-22) also dubs the divine and human

writers on government 'rājasāstrāṇām prapetārah.' The same word is employed by such ancient classical writers as Asvaghosa in his *Buddhacarita* (I 46).<sup>6</sup> The first verse in Prof. Edgerton's reconstructed *Pañcatantra* performs obeisance to Manu, Brhaspati, Sukra, Parāśara and his son and Cāṇakya as the authors of *urpuśāstra* (science of kingship). Another name is *Dandanti*. The *Śāntiparva* (59. 78) explains why Dandanti is so called viz. 'this world is led (on to the right path) by danda (the power of punishment, sanction) or this science carries (or sets forth) the rod of punishment: hence it is called dandanti and it (faces) pervades the three worlds.' In *Śāntiparva* 69. 76 it is stated that 'Dandanti controls the four varṇas so as to lead them on to the performance of their duties and when it is employed by the ruler properly, it makes them desist from adharma.'<sup>7</sup> *Śānti* 63. 28 identifies Dandanti with rājadharmas. The *Kauṭīliya* (I 4) explains 'Danda is the means of the stability and welfare of Ārvakṣiki, Trayī (the three Vedas) and Vārtā; the rules that treat of danda are called dandanti, which is a means of acquiring what has not been acquired, which safeguards what is acquired, which increases what is guarded and distributes (increased wealth) among the deserving.'<sup>8</sup> The *Mahābhārata* says (*Śānti* 69. 102) that a wise kṣatriya, putting dandanti in front, should always desire to acquire what is till then unacquired and should guard what is acquired.<sup>9</sup> The *Nītisāra* (II 15) says that *dama* (control or chastisement) is called danda, the king is called 'danda' because control is centered in him; that the niti (rules) of danda is called dandanti and niti is so called because it leads (people).<sup>10</sup> *Śānti* (69. 194) says that dandanti is the special concern of the kṣatriya (rājan). It is said in the *Vanaparva* 150. 32 that without Dandanti this

6. ब्रह्मजगामं सुदुरहितं वा न चकतुर्लोकं कदाचन तौ ॥ वयोः सुतो तौ च ससर्जन्-  
ल्लगालेन युक्तश्च दृष्टयतिथ ॥ ब्रह्मचरित I. 46.

7. दुष्टेन नीयते चेत् दुष्टं नयति वा पुनः । दुष्टनीतिरिति कपाला प्रहोकाभिप-  
र्णते ॥ शान्तिपर्व 59. 78: दुष्टनीतिः स्वधर्मस्यातुल्यं निपद्यते । प्रमुखा स्वामिना  
सम्पदधर्मो निपद्यते ॥ शान्ति. 69. 76. स्वधर्मः is in the dative and अधर्मः  
in the ablative.

8. आन्वीक्षिकीचर्यवार्तानां योगसेमसाधनो दुष्टः । कस्य नीतिर्दुष्टनीतिः । अदृष्ट-  
ज्ञानार्थो लज्जपरिरक्षणी रक्षितनिर्धनी दुष्टरूपं नीयेषु दण्डिपादनी च ॥ अर्थशास्त्र I. 4 (p. 9).

9. दुष्टनीतिं दुररकुरव विज्ञानम् अविद्यः सदा । अमयाते च लिप्सेत लभ्यं च परि-  
पालयेत् ॥ शान्ति. 69. 102.

10. दमे दुष्ट इति कपालस्तादृषादृष्टो नहीयति । सर्व नीतिर्दुष्टनीतिर्नयनाद्री-  
तिरुच्यते ॥ नीतिसार II. 15 and युक्त. I. 157 (latter reading समानादृष्टो &c.)



whole world would break all bounds. Vide also Śānti 15.29, 63.28, 69.74 ff (eulogy of Dandaniti). Dandaniti is said to be the support of the world (Śānti 121.24) and to have been produced by Devī Sarasvatī (Śānti 122.25.)

Arthaśāstra has been a synonym for dandaniti. When the Āp. Dh. S. II 5.10.16 requires the king to appoint as purohita a brāhmaṇa well-versed in dharma and artha, it is clear that Apastamba has in view dharmaśāstra and arthaśāstra. The Amśāsanaparva says that Brhaspati and others composed arthaśāstras (39.10-11). Droṇaparva 6.1 speaks of a science of artha composed by Manu (*Mānavi arthavidyā*). Vide Jayaswal in 'Manu and Yājñavalkya' (pp. 5, 7, 16, 25, 26, 41, 42, 50, 84, for Manu and Artha). Śānti (71.14) states that a king whose sole concern is with arthaśāstra does not secure dharma and kama and that all the wealth of such a king vanishes in (the pursuit of) improper objects. Vide Śānti 302.109 which speaks of arthaśāstra as resorted to by the best among kings. The Rāmāyaṇa (II 100.14) states that Sudhanvā, Upādhyāya of Rāma, was an adept in arthaśāstra. The arthaśāstra of Kautīliya starts with the statement that it is the quintessence of all the arthaśāstras composed by former teachers in the whole world and at the end Kautīliya states that that śāstra which is a means of acquiring and guarding the earth is arthaśāstra. This mentions two of the four objects of dandaniti stated in the Kautīliya itself (as shown in n. 8 above). Only two objects are mentioned by Kautīliya (as in Śānti 69.102) since they are the first and principal ones to be gained by the practice of the science of government. It is not meant that there was, as regards the topics to be dealt with, any distinction between Dandaniti and Arthaśāstra. The four objects mentioned by Kautīliya are always placed before the kṣatriya by Manu (VII 99-100), Śānti 102.57 and 140.5, Yaj. I 317, Nitisāra I 18 (while I 8 mentions only two purposes of rājavidyā). At the end (XV.1) Kautīliya states 'artha is the sustenance of human beings, that is, the earth peopled by men. That śāstra which is a means of acquiring and guarding that earth is arthaśāstra.' Men derive their sustenance from the earth and all wealth also arises from the earth. Mr. Jayaswal (Hindu Polity p. 5) is not right when he translates 'Artha is human population.' Vide U. Ghoshal's 'Hindu Political Theories' p. 74 n and p. 76 for the various interpretations of this passage by Jayaswal and others. Authors a few centuries later than both the Mahābhārata and the Kautīliya treat the two as

identical. Dandin in his *Daśakumāracarita* (VIII.) expressly says that Viṣṇugupta composed his work on *dandanīti* for the Maurya king in 6000 ślokaś, though the Kauṭīliya states at the very beginning that the work is an *arthaśāstra*. Dandin in the same context refers to 'Arthaśāstras as helping to polish the intellect' and speaks of some of the predecessors mentioned by Kauṭīliya as writers on the śāstra (viz. the Arthaśāstra).<sup>11</sup> The *Amarakośa* treats the two as identical.<sup>12</sup> Medhātithi on Manu VII 43 holds that the word 'Dandanīti' therein refers to the works of Cāṇakya and others. The *Mitākṣarā* on Yāj. I. 313 paraphrases *dandanīti* by *arthaśāstra* and on Yāj. I. 311 explains *dandanīti* as the lore useful in the acquisition and guarding of wealth (only the two objects mentioned by Kauṭīliya in connection with *arthaśāstra*). According to the *Sukrantisāra* (IV. 356) 'that is said to be *arthaśāstra* in which instruction about the conduct of kings and the like is given without coming in conflict with Śruti and Smṛti and in which the acquisition of wealth with great skill is taught'.

The words *arthaśāstra* and *dandanīti* are applied to the science of government from two different points of view. *Artha* is defined in the *Kāmasūtra* (I. 20) as 'education, lands, gold, cattle, corn, domestic utensils and friends and the augmenting of what is acquired' (vide H. Dh. Vol. II part I. p. 9 note 22). Therefore when wealth and prosperity of all kinds is the spring and motive of giving a name the science treating of these is called *arthaśāstra* and when the government of the people and the punishment of offenders are the main ideas the same is called *dandanīti*. Though works like Kauṭīliya's *Arthaśāstra* place a high value on *dharma* they are principally concerned with the treatment of central and local government, taxation, the employment of *sūma* and other *upāyas*, with alliances and wars, appointment of officers and punishment. Therefore *Arthaśāstra* is mainly what is called *dṛṣṭārtha* smṛti, as stated by the *Bhaviṣyapurāṇa* (quoted by Aparārka p. 626, the *Smṛticandrikā* p. 24, *vyavahāra* and *Vīramitrodaya*, *paribhāṣā* p. 19). Medhātithi on Manu VII 1 explains that *dharma* in that verse means

11. अधीष्ट तावद्वन्दनीतिम् । इदमिदानीमाचार्यविष्णुगुप्तेन मोक्षार्थं कृतम् । अतोऽत्र लक्ष्यैः संक्षिप्तम् । ..... येषि मन्त्रकर्मणः साधनमन्त्रकाराः श्रुत्यादिरसवित्तासाधनानाहुर्दन्ति-द्वयपरास्तरयन्तयः &c. । दशकुमारचरिते VIII. pp. 131 and 133 (B.S. Series edition).

12. आन्वयिकी दण्डनीतिस्तर्कविद्यार्थशास्त्रयोः । अमरकोशे (संज्ञादिपर्व). श्रीर-  
श्वासी derives 'दण्डपदेनेन दण्डमर्थं वा दण्डः स नीचते दण्डं वति प्राच्यते यथा ता दण्ड-  
नीतिर्यथाशब्दः ।



'duties' (dharmaśabdah kartavyatāvacaṇah), that the duties of the king are either *dr̥ṣṭārtha* (i. e. the effects of which are worldly and visible) such as the employment of six *gūṇas* (sandhi, vighraha &c.) or *adr̥ṣṭārtha* (that have no visible effect but have a spiritual result) such as Agnihotra; here (in chap. VII-LX of Manu) the remarks relate principally to *dr̥ṣṭārtha* matters since it is well-known that the word *rājadharma* is applicable to such matters (the six *gūṇas* &c.) only.<sup>13</sup> Medhatithi here declares that the rules of *rājanīti* are not based on the canonical books of dharmaśāstra but principally on the experience of worldly affairs.

Another name for the science of government is *Nītiśāstra* or *Rājanītiśāstra*. Śānti<sup>14</sup> 59.74 says that in the *nītiśāstra* are set forth all those means whereby people are prevented from forsaking the right path. The *Nītiśāra* of Kāmandaka<sup>15</sup> (I. 6) does obeisance to Viṣṇugupta who extracted the nectar of *Nītiśāstra* from the vast ocean of *Arthaśāstra* (works). The *Pañcatantra* p. 2 holds that *Arthaśāstra* and *Nītiśāstra* are synonymous. The *Mitākṣarā* on Yāj. II. 21 remarks that the *arthaśāstra* referred to by Yāj. is *rājanītiśāstra* that is part and parcel of dharmaśāstra. The word '*rājanīti*' occurs in *Raghurvaṃśa* 17.68. Vide *Bhagavadgītā* X. 38, *Āśramavāsikaparva* 6.5, *Manu* VII. 177, Śānti 111. 73, 138, 39, 43 and 196, 268.9 and *Anuśāsana* 163.7 for *Nītiśāstra* meaning *Arthaśāstra* or *Rājanīti* and *Droṇa* 152.29 and Śānti 37.9 for the word *rājanīti*. Another noteworthy word is '*naya*' which means '*line of policy*' and is employed by the *Arthaśāstra* (I. 2) when it says '*naya* and *anaya* (bad policy) are treated of in *Dandjanīti*'. It is also used in several classical works, such as the *Kirātārjunīya* (II. 3, 12, 54, XIII. 17).

The relation of *arthaśāstra* to dharmaśāstra has now to be understood. As stated above *rājadharma* is a very important subject of dharmaśāstra. *Arthaśāstra* which is principally concerned with the rights, privileges and responsibilities of the ruler is therefore properly speaking a part of dharmaśāstra. As shown above it is supposed to have

13. धर्मशब्दः कर्तव्यतादिवचन इत्युक्तम् । ... कर्तव्यं च दृष्टार्थं बाह्यगुणादि । अदृष्टार्थं-मद्विहोवादि । तत्रैव प्रमाण्येन दृष्टार्थं उपदिश्यते । तत्रैव च राजधर्मदक्षिणः । मेधा\* on मनु VII. I.

14. वैश्वदेवापिलोकस्तु न चोद्वार्धभर्तृमः । तत्सर्वं राजकार्यं नीतिशास्त्रेभिर्ब्रजितम् ॥ शांति. 59.74.

15. नीतिशास्त्राद्युक्तं भीमानर्थशास्त्रमहोदधेः । तन्नुदधे समस्तस्य विष्णुसुताय वैषम्ये । कामन्दकीयनीतिसार 1. 6.

like dharmaśāstra a divine source. But works on arthaśāstra enter into great details about the government of a country in all its aspects, while dharmaśāstra works generally deal only with a few salient features of rājāśāstra. Just as the Kāmasūtra (I. 2. 14) states that dharma is the highest goal and kāma is the lowest of the three puruṣārthas ( vide H. Dh. vol. II part I p. 9 ), so Arthaśāstra also sets the highest value on dharma. The Kauṭīliya states (III. 1. at end) "In any matter where there is a conflict between dharmaśāstra and practices or between dharmaśāstra and any secular transaction, ( the king ) should decide that matter by relying on dharma. If śāstra comes in conflict with any rational and equitable rule then the latter shall be the deciding factor and the ( strict ) letter of the text will be nowhere'. But Kauṭīliya and other writers on arthaśāstra lay the greatest emphasis on artha. In the eager and relentless pursuit of worldly prosperity means may be recommended or followed which may come in conflict with the strictly ethical standpoint of the dictates of dharmaśāstra. In such cases of conflict dharmaśāstra works lay down ( e.g. Āp. Dh. I. 9. 24. 23, Yaj. II. 21, Nārada, vyavahāramātṛkā chap. I. 39 ) that dharmaśāstra rules are to be preferred to the dictates of arthaśāstra. Viśvarūpa ( on Yaj. II. 21 ) states that according to some predecessors of his the conflict between the dictates of dharmaśāstra and arthaśāstra is illustrated as follows. Manu VIII. 351 ( which is the same as Viṣṇu-dharmasūtra V. 190 and Matsyapurāṇa 227. 116-117 ) when dealing with vyavahāra ( a subject that pre-eminently belongs to arthaśāstra ) provides that in killing an *ātātāyīn*, no fault attaches to the killer : while Manu XI. 89 in the chapter on prāyaścittas ( which is pre-eminently a topic of dharmaśāstra ) states that no penance is prescribed ( i. e. there is no prāyaścitta for removing the guilt ) when a person of set purpose kills a brāhmaṇa. The result is that the latter rule prevails and sin is incurred by killing a brāhmaṇa even if the latter be an *ātātāyīn* ( though there may be no punishment by the king ). Viśvarūpa does not accept

16. संस्थाया धर्मशास्त्रेण ज्ञातं वा व्यावहारिकम् । वस्तिनश्चर्चं विहायेत धर्मोपायं  
विनिश्चयेत् ॥ ज्ञातं विमतिपक्षेण धर्मन्यायेन केवचित् । स्वाधस्तत्र यत्नात् स्वात्मन पाठो हि  
वदयति ॥ कौटिलीय III. 1. p. 150. Prof. K. V. Rangaswami Aiyangar gives two in-  
consistent translations of these verses at pp. 54, 170 of his 'Ancient Indian  
Polity' (1935). धर्मसूत्रात्मकामकलत्वाच्चायं धर्मविक्रान्तानुगम्याचार्यस्य सिद्धिः सा  
सर्ववर्षसिद्धिः । कौटिलीय IX. 7. p. 362.



this illustration. The *Mitākṣarā* also refers to this example, disapproves of it and gives its own example. The *Arthasāstra* declares that a king should endeavour to secure friends, since the acquisition of friends is superior to the acquisition of gold and land (as is laid down in *Yaj.* I. 352). The rule of *dharmaśāstra* is that a king has to dispense justice, being free from anger and avarice and in accordance with *dharmaśāstra*. Therefore when a suit comes before a king he must decide it according to law, even though he may lose the friendship of a person if his decision goes against the latter. The *Vīramitrodaya* follows the *Mitākṣarā*. *Dharmaśāstra* went by the name of *smṛti* (*Manu* II. 10), while *arthasāstra* was treated as an *Upaveda*. The *Viṣṇupurāṇa* III. 6. 28, *Vāyu* 61. 79 and *Brahmaṇḍa* 35. 88-89 mention the four *Upavedas*<sup>17</sup> viz. *Āyurveda*, *Dhanurveda*, *Gāndhārvaveda* and *Arthasāstra* as affiliated to the four *Vedas* respectively viz. *Rgveda*, *Yajurveda*, *Sāmaveda* and *Atharvaveda*. *Kauṭīliya* (I. 5) states that the king should listen to the recital of *itihāsa* in the latter part of the day and includes both *dharmaśāstra* and *arthasāstra* under *itihāsa*<sup>18</sup> and requires the minister knowing *arthasāstra* to advise the king (with examples and precepts derived) from *itihāsa* and *purāṇa*.

Though *Arthasāstra* is in theory for keeping to the path of *dharma*, one cannot blink one's eyes to the fact that the *Mahābhārata* and the *Kauṭīliya* both support in several places the adoption of means entirely divorced from all rules of fair dealing and morality. In *Ādi-parva* 140 we have a discourse by *Kaṇṇika* said to have been a *mantrin* of *Dhṛtarāṣṭra* and a profound student of *Rajasāstra*, which is almost on the same lines as *Sānti-parva* chap. 140 where *Bhīṣma* sets out what lines of policy (*nīti*) should be followed by the ruler in adversity and how he should give up all thoughts of kindness in such straits. He is supposed to give the substance of the dialogue between the sage *Bhāradvāja* and *Satrunṭapa*, king of *Sauvīra*. The whole chapter is full of *Machiavellian* advice. A few specimens may be set out here. One should be very courteous in speech, but like a razor at heart (verse 13); one desirous of prosperity may fold one's hands, may take an oath, may use

17. आङ्गुर्वेदो षड्वेदो नामधर्मवेदि ते षडः । अर्धशास्त्रं चतुर्थं च विद्या अष्टादशैव सा ॥ *विष्णुपुराण* III. 6. 28 quoted by *अपरांक* p. 6.

18. पश्चिमनितिहाससमये । पुराणनितिवृत्तमात्रवाचिकोदाहरणं धर्मशास्त्रमर्थशास्त्रं चेत्तन्निहासः । *कोटिलीय* I. 5. p. 10.

sweet words, place his head on another's feet and even shed tears, one may carry on one's shoulders one's enemy till one accomplishes one's object and when a fit opportunity arises should break him like an earthen pot on a stone (17-18); the king should raise hopes promising their fulfilment at a distant day, but should put obstacles in the fulfilment of the hopes raised in others (32); when one is reduced to a wretched state one may extricate oneself from it by any act whatever whether gentle or horrible and practise dharma after one becomes able to do so (38); one should inspire confidence in one's enemy by some means which appear to be true (to the enemy), but one should strike him down at the right moment when he takes a wrong step (44); whoever causes obstacles to the purpose of the king, whether son or brother or father or friend, should be killed by the king who desires to prosper (47); without cutting the vitals of others, without committing horrible deeds and without killing indiscriminately as the fisherman in the case of fish one does not secure high prosperity (50); when about to strike one should utter sweet words and even after striking one should use honeyed words; even after severing another's head with a sword one should lament and shed tears (54); if some remainder is left in the case of a debt or fire or enemies, there is a tendency to grow and so no remainder should be left of these (58). It is to be noted that this chapter deals specially with what should be done in difficulties and cannot be supposed to be the real teaching of the Mahābhārata which is generally in line with the higher code of dharma-śāstra. It embodied probably the words of earlier arthaśāstra writers like Bhāradvāja. After hearing this discourse on calculated cruelty and deceit Yudhishthira stood aghast and frankly told Bhīṣma that the course of conduct outlined by him did not differ from that of robbers and that he felt bewildered and would not exert himself in the way pointed out. In chap. 142 Bhīṣma replies to this by saying that he did not base his discourse merely on the sacred texts, but also on reason and the essence was distilled by wise men, that the considered rule of conduct for the king is twofold, viz. straightforward and crooked, that one should not ordinarily employ the crooked course of conduct, but should employ it as against an enemy who employs a crooked policy and effectively meet him by such policy. He further says that *rājadharmā* cannot be based on a single source (v. 7) and that policies are to be pursued not merely by reliance on the sacred codes of law but on reason as well



(v. 17) and that Indra himself has declared this rule which he derived from Bṛhaspati. In Śānti-parva a weak king is advised to harass a very powerful ruler's state by sword, fire and poison. In chap. 130 it is stated that the preservation of the state is the paramount consideration and that a king whose treasury is depleted and who is therefore in difficulties may replenish his treasury even by harassing his subjects (except *tāpasas* and learned *brāhmanas*). In chap. 138 it is said that self-interest makes friends or foes and that *avivāsa* (putting trust in no one) is the grand line of policy for kings. So it is clear that the Mahābhārata was prepared to give up in certain circumstances the strict rules of dharmaśāstra for kings and to allow them to pursue devious modes of action that were far from moral i. e. it tries to effect a synthesis of dharmaśāstra and arthaśāstra.

The Kauṭīliya also discloses how arthaśāstra writers did not shrink from giving advice which, to say the least, was most cruel, selfish and immoral. For example, in the section called 'guarding the prince' (Kaut. I. 17) the views of several teachers are set out. Bhāradvāja says that princes are of the nature of crabs eating up their parent; so it is better to finish them in secret when they have no love for their father. Viśalakṣa abhorred this advice as cruel, as unsanctioned murder and as destructive of the seed of kṣatriyas and recommended that it was better to keep them confined in a single spot. Vāṭavyādhi recommended that princes should be made addicted to sensual excesses. Kaut. disapproves of this as living death (for the princes), recommends proper care before conception and after birth and instruction in dharma. In Kaut. V. 6 Bhāradvāja is quoted as saying that when the king is on his death-bed, the minister may set up the kinsmen of the king and the principal princes against one another, that whoever attacks should be killed by inciting the people against him, or having secretly punished the kinsmen and chief princes and brought them under control, the minister should himself take possession of the kingdom. Kauṭīliya does not approve of this. But even he advises (XIV Aupaniśadika) the employment of poison, herbs and incantations against those who are irreligious or wicked. In I. 18 even Kaut. does not shrink from advising that secret emissaries (of the reigning king) may kill an abandoned prince with weapons and poison and in V. 1 Kaut. remarks that, when a king cannot openly put down the principal courtiers or chiefs

who are dangerous to the kingdom, he may inflict punishment on them in secret or may induce the brother of the officer to be punished to attack the latter by promising to give him the position and wealth of the officer and then destroy that attacker with weapons or poison saying that he was guilty of fratricide. In V. 2 for replenishing a depleted treasury Kauṭilya coolly asks the king to deprive the temples in the kingdom of their wealth through the superintendent of religious endowments.

Sanskrit literature on rājadharmā is very extensive. Apart from the meagre materials contained in such ancient dharmasūtras as that of Āpastamba, the following works deserve close study and have been utilized in this section; the Mahābhārata (Vanaparva 150, Sabhā 5, Udyoga 33-34, Śānti 1-130, Āśramavāsika 5-7), the Bāmāyana (Ayodhyā, chap. 15, 67, 100; Yuddha 17-18, 63), Manusmṛti VII-IX, Arthasāstra of Kauṭilya (which is the leading work on rājadharmā), Yāj. I. 304-367, Vṛddha-Hārta-smṛti chap. VII verses 188-271, Bṛhat-Parāśara chap. X, pp. 277-285, Viṣṇudharmasūtra III, the Nītisāra of Kāmandaka, Agnipurāna chap. 218-242, Garuḍapurāṇa 108-115, Matsya 215-243, Viṣṇudharmottara II, Mārkaṇḍeya 24, Kālikā 87, the Nītiprakāśika attributed to Vaiṣampāyana (ed. by Oppert), Śukranītisāra (ed. by Jivānanda, 1890), the Abhilaṣitārthacintāmaṇi or Mānasollāsa (first four viṃśatis) of Someśvara, Yukti-kalpataru of Bhoja, Nītivākyaṃṛta of Somadeva (959 A. D.), Bārhaspatyasūtra (ed. by Dr. F.W. Thomas), the Rājanītikāṇḍa of the Kṛtyakalpataru of Lakṣmidhara (edited from a single ms. by Jagadish Lal Shastri at Lahore, 1942), Rājanīti-ratnākara of Candēśvara, Rājanīti-prakāśa of Mitrāmīśra, Nītimayūkha of Nilakaṇṭha, Rājadharmakaustubha of Anantadeva, Budhabhūṣaṇa of Prince Sambhāji (between A. D. 1675-1680, ed. by Prof. H.D. Velankar), Daṇḍanīti of Kesavapāṇḍita (edited by V. S. Bendrey, Poona, 1943). In recent times there is a deluge of works mostly inspired by the publication of the Kauṭilya dealing with ancient and medieval Indian polity in its various branches. The most important of these and a few other works independent of Kauṭilya are mentioned in the note below.<sup>19</sup>

19. Some parts of the Śāntiparva may be later than Kāmandaka's work, since Śānti (123, 11-12) refers to the dialogue of Kāmandaka and Āṅgariṣṭha king of Aṅga. But it need hardly be said that it is not absolutely necessary to hold that the extant Nītisāra of Kāmandaka is referred to by Śāntiparva.



It would be impossible to go into all details about Government and Politics within the space at my disposal. What is

(Continued from last page)

The reference may be only to a legend. The modern works referred to above are:—'Some Aspects of Ancient Indian Polity' (1935) and 'Rājadharmā' (1941) by Rao Bahadur K. V. Rangaswami Aiyangar; 'The Nature and grounds of political obligation in the Hindu state' by J. J. Anjūria (1935); 'Development of Hindu polity and Political Theories' (Calcutta, 1929) by N. C. Bandopadhyaya; 'Public Administration in Ancient India' (1916) by Dr. P. N. Bannerjee; 'Some Aspects of ancient Hindu Polity' (1921) by Prof. D. R. Bhandarkar; 'The theory of Government in Ancient India' (1927) and 'The State in Ancient India' (1928) by Dr. Beni Prasad; 'Buddhist India' (1903) by Rhys Davids; 'Hindu Administrative Institutions' (Madras, 1929) and 'Mauryan Polity' (Madras, 1932) by Prof. V. R. Ramchandra Dikshitar; 'History of Hindu Political Theories' (2nd ed. Calcutta, 1927) by U. Ghoshal; Prof. E. W. Hopkins' 'Position of the Ruling Castes in Ancient India' in *Journal of the American Oriental Society*, vol. XIII, pp. 37-372; 'Hindu Polity' (1924) by K. P. Jaysawal; 'Administration and Social Life under the Pallavas' (1938) by Dr. C. Minakshi; 'Studies in Ancient Hindu Polity' (vol. I, 1914), 'Inter-state Relations in Ancient India' (London, 1920), 'Aspects of Ancient Indian Polity' (Oxford, 1921), 'Studies in Indian History and Culture' (1925) by Dr. Narendranath Law; 'Corporate Life in Ancient India' (Calcutta, 1919) by Dr. R. C. Majumdar; 'Local Government in Ancient India' (1919) by Dr. Radhakumud Mukerjee; 'Study in the Economic condition of Ancient India' by Dr. Pran Nath; 'Positive Background of Hindu Sociology' (Allahabad, 1914) and 'The Political Institutions and Theories of the Hindus' (1922) by Prof. Benoy Kumar Sarkar; 'Sovereignty in Ancient Hindu Polity' by Dr. H. N. Sinha (London, 1938); 'International Law in Ancient India' by Prof. S. V. Visvanathan. I have to make general acknowledgments to these works for much useful information, particularly to those of K. P. Jaysawal and N. N. Law. For a list of Mss. on Polity or its sub-topics, vide N. N. Law's articles in *Modern Review* for October 1917 to January 1918 and March and June 1918 and for a list of available Mss. and printed works on 'Vārtā' (economics) vide the same writer's 'Studies in Indian History and Culture' pp. 384 ff. In my treatment of *rājadharmā* I have generally restricted myself to data derived from Sanskrit works on *dharmasūtra* and *arthasūtra* and have rarely ventured into works in Pāli. Similarly it has to be borne in mind that the works referred to cover a period of several centuries and further that India is not one country but a continent of which northern India formed one more or less homogeneous unit, while the Deccan formed another and South India formed a third unit. The institutions of these, particularly of the last of the three, differ in many particulars from those of the other two. But the authentic data furnished by South India are later by centuries than those supplied by the north and besides are comparatively meagre. Therefore in this work one has to confine oneself principally to Sanskrit works composed in North India or the Deccan.

proposed is to indicate and dilate upon only the fundamental ideas and principles of the several matters falling under rājadharmā. Nor is it possible to enter here into formal and lengthy refutations of the several views propounded by Western and Indian writers about the forms and functions of Government and the state of society in ancient India. Most of the modern works referred to in note 19 above are more or less based on the same material in Sanskrit and Pāli, but the emotional or subjective element is different in each case. Some western writers have without very solid foundations indulged in a facile and sweeping generalization that the great Empires of antiquity such as those of the Assyrians, the Babylonians, the Medians and Persians and the Indians were mainly tax-gathering institutions (vide Sir Henry Maine's 'Early History of Institutions' 1875, pp. 384 and 390; and Prof. Rangaswami Aiyangar's 'Ancient Indian Polity' 1935, pp. 5—6 and pp. 66—69 (where passages from T. H. Green and others are cited); while some Indian writers vehemently assert that the Government in Ancient India was always some form of limited monarchy. Both characterisations are in my opinion misleading. An endeavour will be made to present from the original texts as true a picture of the polity of ancient and medieval India as it is possible for me to do. It will do no good to label the ancient institutions of India with concepts and terms current in the West during the last one hundred and fifty years or so. Even in the West true democracies or real democratic governments did not exist and the masses in no country had elective popular assemblies or councils before the last quarter of the 18th century. Such assemblies do not exist even now in several countries of Europe. Even in the ancient Greek city states the number of slaves who had no voice in the government was several times as large as the free citizens and those states were no democracies at all in the strict sense.<sup>19a</sup> Indian polity has a recorded history of over two thousand years from at least the 4th century B. C. Its growth was gradual but its aims and ideals and its main elements have been the same throughout the centuries. India need not feel ashamed or fear

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19a. Berolzheimer in 'the World's Legal Philosophies' (tr. by Jaatrow, New York, 1929) p. 62 remarks 'Plato approved of slavery unreservedly, finding it a necessary condition for the maintenance of the proper status of the citizen, ... Thus in the maritime and industrial states there was a large slave class: in Corinth, 400000; Aegina, 470000; in Attica (according to the census of 309 B. C.) 400000'.



a comparison of its ideals and theories of State with the ideals and theories of western countries in ancient and medieval times. If western countries could boast of so-called republics and city states in ancient Greece and Rome, India also had several republics in ancient times. The ancient Hindus made their own contributions to political thought, though unfortunately Western scholars of the 19th century like Max Müller, Weber and Roth were concerned most with the Vedic and allied literature and either did not know or ignored the vast literature on politics contained in Sanskrit and Pali works. Vide 'Some Aspects of ancient Hindu Polity' by Prof. D. R. Bhandarkar (1929) pp. 2-3 for views of Max Müller and others and criticism thereof, also Dr. Beni Prasad's 'Theory of Government &c.' p. 1, U. Ghoshal 'History of Hindu Political Theories' pp. 3-4.

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## CHAPTER II

### SEVEN AṄGAS OF RĀJYA

According to almost all of our authorities a state (*rājya*) is constituted by seven elements<sup>20</sup> viz. *swāmin* (ruler or sovereign), *amātya* (minister), *janapada* or *rāṣṭra* (the territory of the State and its people), *durga* (fortified city or capital), *kośa* (accumulated wealth in the ruler's treasury), *daṇḍa* (army), *mitra* (friends or allies). These seven are called *aṅgas* or *prakṛtis*. The word *prakṛti* in works on politics is also used for the constituents of a circle of states (of a *maṇḍala*). Vide Manu VII 156 and Kauṭilya (VI 2). The word also means ministers as in Śukranitisāra II 70-73 and 'subjects' in Khāravela's Inscription (E. I. vol. 20 p. 79 l. 4), Nārada (*prakṛpaka* 5), Raghuvamśa VIII 18. The order in which these are arranged and their names vary a good deal. The quotations given below will indicate how the order differs. The sequence is important for the reason that some of our authorities expressly state that when calamities befall or deterioration sets in each of the seven elements, those that befall each preceding one are more serious for the State than those of each succeeding one (Kauṭilya VIII 1, Manu IX 295). For *janapada* sometimes the word *jana* or *rāṣṭra* is used, for 'daṇḍa' the word 'bala' and the word 'pura' for 'durga'. The Āśramaśāstra (5.8) speaks of eight *aṅgas* of *rājya*. According to Sumantu quoted by the *Sarasvatīvilāsa* (p. 46) *daṇḍa* means "punishment bodily or monetary" and 'army' is included under 'kośa'. Sumantu says that the *swāmin* has to be preserved by himself, the ministers by showing them proper respect, the people by keeping them contented, the fortified capital by abundance of wealth and grain, the *kośa* by proper expenditure, *daṇḍa*

20. स्वाम्यमात्यजनपददुर्गकोशदण्डमित्राणि प्रकृतयः । कौ. VI 1, p. 357; स्वाम्यमात्यजनपददुर्गकोशदण्डमित्रैश्च । निशाप्येताः प्रकृतयो राज्यं समाकुमुच्यते । पाञ्च. I. 353; स्वाम्यमात्यो दुरं राष्ट्रं कोशदण्डो सुवृत्तया । मम प्रकृतयो ज्ञेयाः समाकुं राज्यमुच्यते । मनु IX. 294; स्वाम्यमात्यदुर्गकोशदण्डराष्ट्रमित्राणि प्रकृतयः । विष्णुधर्मसूत्र III. 33; स्वाम्यमात्यदुर्गदुर्गकोशदण्डजनाः । नोतमसूत्र quoted in सरस्वतीविलास p. 45. Vide also शान्ति 69, 64-65, मत्स्य 225, 11 and 239, अग्निपुराण 233, 12, कामन्दक I, 16 and IV, 1-2. The application of the word प्रकृति to these is lucidly explained by Aparārka (p. 589) यत्रः कार्यसुखदोहप्रतिष्ठेते नियमेन भवति सा प्रकृतिः । यत्र विरूपं कुण्डलरूपं । राज्यं च विना स्वाम्यादिभिर्मोक्षयते, उत्पन्नमपि न तैर्विना विरुपात्मनः प्रकृतिः । ततो भवति स्वाम्यद्वयो राज्यप्रकृतिः ।



by following one's dharma, friends by truthfulness. The authorities are agreed that the ruler is the most important or the first of the seven. Kautilya puts the matter very forcibly and realistically when he states that the briefest exposition of the elements of *rājya* is to say that the king is the State<sup>21</sup>. This is really not the same doctrine as that emphasized by Louis XIV of France when he said 'L'Etat c'est moi'. Kautilya makes his position clear (in VIII 1) by saying that it is the king who appoints ministers and servants and superintendents, who takes measures of relief against calamities befalling the other prakṛtis and measures of prosperity, that it is he who appoints other ministers when those already appointed are under calamities, that if the ruler is prosperous he transmits prosperity to his prakṛtis, that the prakṛtis bear that character which the king has and that hence the ruler occupies the position of a permanent, never-exhausted centre of power. The Śukranītisāra II.4 remarks that if the king begins to act at his sweet will, it leads to calamities, to loss of ministers and of the kingdom. The Śukranītisāra (I 61-62) compares the seven aṅgās of *rājya* to the organs of the body viz., the king is the head, the ministers are the eyes, ally the ear, treasury the mouth, the army the mind, capital and *rāṣṭra* are hands and feet. It is emphasized by Kām. (IV.1-2) that each of the seven elements is complementary to the others, that if the state is defective even in one out of the seven elements it does not pull well. the Śāntiparva it is stated that it is not possible to say categorically that any one of the seven excels the others in merit, but that at different times a different element assumes importance over others, since that particular element is in the particular circumstances capable of accomplishing the purpose in hand. This shows that Manu and the Mahābhārata held that there was an organic unity in the several elements of *rājya*. All must work harmoniously towards one ideal or end. Manu (IX. 296-297) says this by means of a simile 'Just as among the three staves tied together (by a rope of cow's hair) used by a *sannyāsin* no particular staff is superior (to the others), so among

21. राजा राज्यमिति ब्रह्मविज्ञेयः । कौटिल्य VIII. 2; समुद्रवसानौषो वि स्वा-  
मीति । को. VIII. 1; सम्राट्सुख्यते राज्यं तत्र भूयो ह्यः सुखः । इत्यमरः सुखं सुखं  
कृतो बलं नमः । इत्सी पादो दुर्गसाहो (?)—शुक्रमीति I 61-62; सम्राज्यमिति राज्यस्य  
भूते स्वामी वकीर्तिकः । राजनीतिव. p. 123; सम्राट्स्य राज्यस्य विदुषस्तपे विदुः ।  
अन्येऽप्युपयुक्तस्य का केन सुखतोऽधिकः ॥ तेषु तेषु हि कालेषु तपद्वत् विविधते । केन यत्  
मित्रते कार्यं तपयन्त्याप्य वदन्ते ॥ शान्तिपर्वः मनु. IX. 296-297 contain almost  
these very words and ideas. मनु. IX. 299, 1 has परस्परौषकारिदं सम्राट् राज्यसुख्यते ।

the seven elements of the state no particular one can be said to excel the others, since each of them has a particular excellence of its own: a particular element is pre-eminent in some particular matter and therefore the superiority of one to the others when expressed (as e. g. in Manu IX. 295) is to be confined to that matter alone. Manu here emphasizes the harmonious working or unity of the seven elements though they are diverse in their individual characters. The analysis of the elements and nature of the State led ancient Indian writers to hold that a mere conglomeration of people did not by itself constitute a State, but that for a State there must be people who live within certain definite geographical limits (*rāstra*), they must be bound by the bond to render allegiance to a ruler (*svāmī*), have a certain system of government (*amātya*), must have a regulated economic system, a force for defence and international relationships. That is, the most essential elements of a state are (1) a sovereign, (2) a system of government, (3) a definite territory and (4) a population of some size. These four were known even to the most ancient *sūtras*. Vide Gaut. XI 1 (*rājā*), Āp. II 6. 25. 10 (*amātya*), Āp. II 10. 25. 11, II 10. 26. 4 (*visaya, nagara, grāma*), Gaut XI 5-8 (*prajā*).

These seven elements will now be dealt with one after another.

It should be noted that neither Kauṭilya nor Kāmandaka defines *rājya*. Etymologically it means the 'karma' or 'bhāva' (activity or state of a king), being derived from 'rājan' with the affix 'ya' (*ṣyañ* or 'yak', acc. to Pāṇini V. 1. 124 and 128). This is the etymological meaning. But 'rājya' is employed in the sense of 'kingdom' in popular parlance and also in the *śūtras* and works on polity as in Manu VII 111, Kām. XIII 81-82. But when it is said that 'rājya' has seven elements then 'rājya' has a very wide meaning and stands for the king, the ministers, the country and its people and the economic and military resources and in such a case it is proper to translate the word as 'the State' (as including both the Government and the governed). In some cases 'rājya' should be rendered as 'government' which includes only the king and his ministers and conveys also in modern times the agency or machinery through which the will of the State is formulated, realized or carried out; vide *Mānasollāsa* II 8, verses 688, 689, 691. The *Nītivākyaṃrta* (p. 43) says "rājya means the activity of the ruler that would be appropriate to protecting the earth".



Medhātithi on Manu VIII. 1 remarks that *rājya* means 'a prosperous people'. In XIII. 4 Kautilya states (*na hyajano janapado rājyam janapadam vā bhavatīti Kautilyah*) it is his opinion that a territory without any inhabitants cannot become a *rājya* (a kingdom) or a *janapada* (as one of the seven elements). Śābara on Jai. II. 3, 3 has a discourse on the derivation of *rājya*.

Prof. Bhandarkar in 'Some Aspects of Ancient Indian Polity' (pp. 66-89), Jayaswal in 'Hindu Polity' part II p. 9, Prof. B. K. Sarkar in 'Positive Background of Hindu Sociology' Book II pp. 34-39 and others maintain that this ancient analysis of *rājya* into seven elements shows that the idea of the State as an organism, that is, the organic theory of the State was known to Hindu thinkers and that this doctrine of *saptāṅga rājya*<sup>21a</sup> satisfies the definition of the State given by Bluntschli and others. On the other hand Mr. Anjaria in chapter IV of his 'Nature and grounds of political obligation in the Hindu state' after pointing out how there are different versions of the organic theory of the state denies vehemently that the Hindu theory can be called a proper organic theory of the State, particularly because the Hindu thinkers did not regard the State as a moral organism, because they attached a permanent stigma of inferiority to large sections of the community on the bare ground of birth and that the Hindu conceptions did not harmonize the authority of the State and the liberty of the individual. It would be far beyond the scope of the present work to enter into any discussion of this problem. All that may be said is that Mr. Anjaria tilts the balance to the other side too much. The faults he points out in the Hindu theory and practice beset almost all theories of the State almost in all countries. Even in the times of Plato and Aristotle huge populations of slaves had no voice in the affairs of the state. Up to the 19th century true democracies never existed even in Europe.

**The Ruler**—The necessity of a ruler is forcibly emphasized in several works. The Ait. Br. I. 14 says that the gods thought they were worsted because they had no king, that therefore they elected one by consent. This shows that military necessities

21a. Korkunov in 'General Theory of Law' (tr. by W. G. Hastings, New York, 1922) says 'Bluntschli assimilates government to the head, as it is the head of the State, the ministry of the interior to the ears, and that of foreign affairs to the nose' (p. 274).

led to kingship. Manu VII, 3 ( = Sukranitisāra I, 71 ) says ' the Creator created the king for the protection of all this world when everything ran through fear hither and thither, as there was then no ruler in the world '. It goes on to say that the Creator proceeded to create Dapḍa ( the power of punishment ) for the sake of the king and that if the king does not sedulously employ dapḍa for punishing those that deserve it, the strong would torment the weak as fish are fried on a pike or as in water fish devour each other ( Manu VII, 14 and 20, the last also showing a variant ' jāle ' for ' sūle ' ). This idea of *mātsyanyāya* ( the maxim of the larger fish devouring the smaller ones or the strong despoiling the weak ) is frequently dwelt upon by Kautilya, the Mahābhārata and other works. It can be traced back to the Śatapatha-brāhmaṇa XI, 1, 6, 24 ' whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law ', which appears to mean that when there is no rain, the reign of law comes to an end and *mātsyanyāya* begins to operate. Kautilya says ' if dapḍa be not employed, it gives rise to the condition of *mātsyanyāya*, since in the absence of a chastiser the strong devour the weak ' and ' the people overwhelmed by the operation of *mātsyanyāya* made Manu Vaivasvata their king. ' <sup>22</sup> That in the absence of a king ( *arājaka* ) or when there is no fear of punishment, the condition of *mātsyanyāya* follows is declared by several works such as the Rāmāyaṇa II, chap. 67, Śāntiparva 15, 30 and 67, 16, Kāmandaka II, 40, Matsyapurāṇa 225, 9, Mānasaollāsa II, 20 verse 1295. Numerous works contain eulogies of dapḍa. The king is called dapḍadhara in many works e.g. in Śāntiparva 67, 16 and Kām. I, 1. Gautama XI, 28 says that the word dapḍa is derived by the wise from the root ' dam ' ( to control ), that he ( the king ) should control by means of dapḍa those who observe no restraint and ( XI, 31 ) that the instructions of the teacher and the power of punishment ( wielded by the king ) guard those who violate the rules of varṇas and āśramas. The Matsyapurāṇa <sup>23</sup>

22. ( दण्डः ) अयणीतो हि मात्स्यन्यायसूत्रावपत्ति । बलीयानवर्त हि दमते दण्डधराभावे । ( शौटिल्ल I, 4 ; मात्स्यन्यायमिश्रितः राजा मर्तुं वैरस्ये राजानं चकिरे । की. I, 13 ; मत्स्या इव जना मित्वे बलधनित् परस्परम् । अगोत्रा 67, 31 ; दण्डस्यैव मनेहोके विनश्येदुरिमाः वजाः । जले मत्स्यनिवासमहवदुर्बलं बलधराः ॥ शान्ति 15, 30 ; राजा येन मनेहोके दुर्मित्रा दण्डधारकाः । जले ... बलधराः ॥ शान्ति 67, 16 ; दण्डभावे परित्यक्ती मात्स्यो न्यायः प्रवर्तते । कामन्दक II, 40.

23. वस्माद्द्वान्मान्दमवर्तयतिहान्दण्डपरदपि । दमनाद्वदनाच्छेव तस्माद्वर्तं विदुर्द्वेषः ॥ शान्ति 15, 8, अष्टि. 226, 16 ( reads > दमवर्तदण्डवान्दण्डपरदपि ), मत्स्य 225, 17 ( reads दुर्मित्रान् दण्डपरदपि ).



225, 17, Agnipurāṇa 226, 16 and Śāntiparva 15, 8 state that danda is so called because it suppresses those that are not restrained (from the root 'dam') and punishes those that are imprudent or ungentlemanlike (from the root 'dap'). Danda is raised to the position of a divinity by Manu <sup>24</sup> VII, 25 (= Viṣṇudharma-sūtra III, 95 = Matsya 225, 8), Yaj I, 354, Śānti 121, 15. Danda rules over all people, it protects all of them, danda is awake even when (the guardians of law) have gone to sleep, the wise regard danda as dharma (Manu VII, 18 = Śānti 15, 2 = Matsya 225, 14-15). The whole world is under the heel of danda, for it is difficult to find a man who is pure by nature (Manu VII, 22 = Śānti 15, 34). The conception of danda is therefore this that the State's will and coercive power keep the individual and nation within the bounds of dharma, punish for breaches and effect the good of the whole. The gods, *dānavas*, *gandharvas*, the *rakṣasas* and reptiles—these also tend to bring about enjoyment for men because they are pressed down by danda (Manu VII, 23). <sup>25</sup> The Bhagavadgītā (X, 38) identifies danda with the divine Kṛṣṇa 'I am danda in the hands of those who control others, I am *śikṣā* (i.e. *rājantī*) for the conquerors'. For the detailed effects and long eulogies of danda, vide Manu VII, 14-31, Matsya 225, 4-17, Kāmandaka II, 38-44. These eulogies of danda presuppose the theory that people obey law and the dictates of the śāstra through the fear of force or punishment. Danda should be neither too severe nor too mild, but should be appropriate to the fault committed (Kaut I, 4, Kāmandaka II, 37, Manu VII, 16, Śānti 15, 1ff, Śānti 56, 21, 103, 34). Śānti 57, 41 advises that one should first secure a king, then wife and then wealth, for in the absence of the ruler there would be no wife nor private property. <sup>26</sup> This shows that the institutions of family and private property and the protection of the weak are bound up with the existence of a ruler. Kātyāyana (in Rāja N. P. p. 30) says the king is the

24. अथ इषामो लोहितालो दण्डश्चरति पापहाः । पञ्चास्तत्र न ह्यस्मिन् नेता चेन्माधु पश्यति ॥ मनु VII, 25 = मत्स्य 225, 8 = विश्वसुधर्मसूत्रः 96 III समिति (121, 15-16) has भीलोपलब्धदण्डश्चरति दण्डश्चरतुर्भुजः । ... एतद्वयं विभक्त्यर्थं दण्डो नित्यं दुरासदुः ॥

25. This appears to be suggested by the words of the Tai. Up. II, 8 (भीमास्माद्व्रातः पश्ये भीषोदेति सुवः । भीमास्माद्विश्वेन्द्रश्च सूर्योर्ध्वानि पश्यतः ॥

26. राजानं धर्मं विन्देत्सर्वो भार्यी सती धनम् । राज्यमसति लोकस्य कुतो भार्यी कुतो धनम् ॥ शांति 57, 41. The first half is आदिपर्व 160, 12 (Cr. ed. 142, 12). This verse is said to have been uttered by Bhārgava.

protector of the helpless, the home of the homeless, the son of the sonless and the father of the fatherless.)

In order to magnify the importance of the kingly office, certain works state that the king has in him parts of the gods. For example, Manu says "the Creator created the king with the essential parts taken from Indra, the Wind god, Yama, the Sun, Agni, Varuna, the Moon and Kubera the lord of wealth and therefore he surpasses all beings by his majesty (VII 4-5 and compare Manu V, 96); one should not disrespect a boy-king with the thought 'he is a human being (like others)' for it is a great deity that stands (before people) in human form as a king" (Manu VII 8 = Śānti 68, 40). This conception goes back to Gautama XI, 32 ('Therefore a king and a spiritual teacher must not be reviled') and Āp. Dh. S. I. 11. 31, 5 ('he shall not speak harsh or abusive words of the gods or of the king'). Manu VII, 3-4 are the same as Sukranītisāra I 71-72. The Matsyapurāṇa 226, 1 states that the king was created by Brahmā by taking portions of gods for wielding the power of punishment for the protection of all beings. Manu (IX, 303-311) puts forward a slightly diluted theory, viz. the king should possess the majesty of and imitate in his actions the first seven deities enumerated above with the Earth as the 8th and Manu sets out what the eight characteristic actions are. Matsya 226, 9-12 are the same as Manu IX, 303-306. The Agnipurāṇa (226, 17-20) states that as the king exercises the functions of nine deities viz. the Sun, the Moon, Vāyu, Yama, Varuṇa, Fire, Kubera, the Earth and Viṣṇu he has the form of these. Vide Sukranītisāra I 73-79 for similar ideas. These verses do not amount to the express theory of divine origin, but assimilate by analogy the king's functions to those of certain deities. The Nārada-smṛti (prakṛṇaka section, verses 20-31) contains<sup>27</sup> several interesting dicta. It says that in the form of the king it is really Indra himself who moves about on the earth (v. 20), that a king even when devoid of qualities deserves honour from the people, that kings exercise the functions of five deities viz. of Agni, Indra, Soma, Yama

27. राजेति सञ्चारयेत् भूमौ साक्षात्सहस्रहृत् । पञ्चानां विष्णोऽप्येवं दुग्धं कृत् पञ्चावतिः ॥  
पञ्च कृपाणि राजानो धारयन्त्यमिताकसः । अग्नेरिन्द्रस्य सोमस्य यमस्य पनदस्य च ॥  
असुचिर्बिम्बनासस्य सुचिर्बलि मानवः । सुचिर्बैवाशुचिः सन्पदं कथं राजानं दैवतम् ॥  
वारदस्त्विति, पञ्चोक्तं 20, 22, 26, 52; इन्द्रमेव पशुहते पञ्चाजानमिति श्रुतिः । यथैवेन्द्रस्य  
राजा संदुग्धो भूतिनिष्कृता ॥ शास्त्रि. 67, 4; कान्वायन says 'सुरास्यसञ्चयुक्तः स्वर्गाद्युप-  
कलेन तिष्ठति । कर्तव्यं तेन सञ्चार्य देन तत्त्वं समाप्नुयात्' quoted by राजधर्मशास्त्र  
III p. 16. तत्त्वं means सुरास्यम्.



and Kubera (vv. 26-31). The *Mārkaṇḍeyapurāṇa* (27. 21-26) mentions the same five deities. 'The Veda says that when a king is chosen it is Indra himself that is chosen; one desirous of prosperity should honour the king just as one worships Indra'—says Śānti 67. 4. Śānti 69 states that all the gods are invisible, but the king is a deity that can be seen. The *Vāyupurāṇa* (57. 72) remarks <sup>22</sup> that in all past and future *manvantaras* universal emperors (*cakravartin*) are born on the earth with parts of Viṣṇu. The *Matsyapurāṇa* (226. 1-12) mixes up the theory of the creation of the king from parts of the gods with the lesser idea of his functions being similar to those of certain deities. The *Bhāgavata-purāṇa* (IV. 14. 26-27) states that Viṣṇu, Brahmā, Śiva, Indra, Vāyu, Varuṇa—these and other gods—exist in the body of the king and that the king is full of (the parts of) all gods. It is to strengthen this conception that ancient kṣatriya dynasties and their panegyrists tried to trace for those dynasties descent from the Sun or the Moon and in later times from Fire. The practice of addressing the king as 'deva' in Sanskrit dramas is due to the same tendency of the glorification of the royal office. Aśoka was styled 'devānām priya' (beloved of the gods) and Kushana emperors like Kaniṣka and Huviṣka styled themselves Devaputra (E. I. vol. I. pp. 371 at pp. 381 and 386). This phenomenon is not confined to India. Alexander the Great and Julius Caesar had their descent traced to gods and goddesses. Alexander was deified during his life-time in 324 B. C. by the Greek world (vide Cambridge Ancient History, vol. VI p. 433) and Caesar's image was carried among those of the immortal gods. Kauṭilya (I. 13) makes a spy say among pauras and jānapadas 'kings are (in) the place of (perform the functions of) Indra and Yama, since they visibly inflict punishment and bestow favours. Even divine punishment affects those who despise them (kings). Therefore kings should not be despised'. Hence it must be said that the conception of the divine nature of the kingly office was well-known in Kauṭilya's days and he was not above recommending the employment of this conception for safeguarding the king's position. Vide *Rāmāyaṇa*, III. 1. 18-19 and VII. 76. 37-45 and *Mārkaṇḍeyapurāṇa* 24. 23-28, *Viṣṇudharmotara* II. 2. 9 for similar ideas. The phrase 'nā viṣṇuḥ pṛthivīpatiḥ'

22. विष्णोरङ्गिन मापन्ते दुषिणो चक्रवर्तिनः । मन्वन्तरेषु सर्वेषु भर्गिताजापतेषु ये ।  
वायु 57. 72; compare काण्वक्त्रि para 80 about prince Candrāpīḍa 'सर्वेषां मनोस्ते  
द्वयान्तधारिणे भवन्ते चन्द्रपीडच्छत्रे दुष्कृतिकेसराश्च ।

is well-known and may be interpreted in two ways viz. the ruler of the earth is Viṣṇu incarnated as man or no king is not Viṣṇu i. e. every king is Viṣṇu. The Pañcatantra<sup>29</sup> (I 120 p. 19) states 'Manu has declared that the king is made up (of parts) of all gods'. The Rājāniti-prakāśa is careful to point out that the idea of the king having in him parts of the deities applied only to the mahārāja (the sovereign ruler), while the idea of a ruler doing the functions of five deities applies to vassal kings.<sup>30</sup> For eulogy of the kingly office, vide Manu VII 6-17, Śānti 63, 24-30, Śānti 68, Kām. I 9-11, Rājāniti-prakāśa pp. 17-31.

But it should not be supposed that this glorification of the king resulted in the full-fledged theory of the divine right of kings or that every king, however bad, was looked upon as a divinity or could do what he liked. In the first place, the Rājāniti-ratnākara<sup>31</sup> (p. 83) when speaking of the coronation of a prince by his abdicating royal father quotes a verse where the people (*prajā*) themselves are called Viṣṇu. In the second place the king's authority over brāhmanas was limited (vide H. Dh. vol. II part 1 pp. 139-140). The Gautama-dharmasūtra (XI 1, 7 and 8) says<sup>32</sup> 'the king rules over all, except over brāhmanas; all, except brāhmanas, should while sitting low on the ground wait upon (worship) him (the king) who occupies a high seat; they (the brāhmanas) too should honour him'. From the time of the Ait. Br. (37. 5) the harmony between the king and the brāhmanas and the king's following the advice of brāhmanas had been insisted upon. Vide Ait. Br. 40. 1, Gaut. VIII 1, XI 27. Further the Śukranitiśāra (I 70) states that a king who oppresses the subjects and causes loss of dharma is made up of the parts of *rākṣasas*.<sup>33</sup> Manu (VII 111-112) states that

29. सर्वदेवमयो राजा मनुना संघर्षोक्तिः । तस्मात्तमेव सेवेत न इत्येवं किंचिच्च ॥ पञ्चतन्त्र I. Some editions read तस्मात् देववत्पदेव.

30. इयं च दूर्बलदेवांशकृता महाराजस्यैव । पञ्च देवाणि... धर्मदत्त च-दुर्बलं नारायणपञ्चकृता तु क्षिप्रमाण्डलिकरूप भूयन् । राजनीतिर. p. 20. Vide Śānti 68, 41-47 for the five.

31. इति सर्वाश्च (सर्वे ?) वजाविष्णु साक्षिण आशयेऽशुभः । राजनीतिर. p. 83.

32. राजा सर्वदेहे ब्राह्मणवर्ज्यः । हस्तदर्पासीनमपत्ताधुपासीरिषण्ये ब्राह्मणेष्वपः । तेऽरेणं सम्परेद् । गो. XI. 1. 7-8. गो. XI. 7 is quoted by मेघ. on मनु VII 6 and by राजनीतिप्रकाश p. 17.

33. यो हि धर्मवरो राजा देवाणां पञ्च रक्षसाश्च । अशुभो धर्महोपी वजावीहकरो भवेत् ॥ शुक्रनीति I. 70 ; नीचहीनो दीर्घवृत्तं वृद्धसेवी हनीविषुहः । उज्जिष्ठसुभो यो राजा स श्रेष्ठो देवतीक्ष्णः । विपरीतस्तु रजोऽज्ञः स वै नरकभाजकः । सुधीरसदृशो विप्रं तस्य वापयन्ताः किल ॥ शुक्रनीति. I. 86-87.



the king who harasses his subjects loses his life, family and kingdom. Moreover stories of kings killed for their tyranny are found in the ancient literature. For example, Vena, who was jealous of the gods, wanted sacrificial offerings to be made to himself (and not to the gods) and violated dharma, was killed by the brāhmanas (Śāntiparva 59. 93-95, Bhagavatapurāṇa IV. 14). The Amsāsanaparva<sup>34</sup> (61. 32-33) solemnly sanctions the killing of a king in certain circumstances "The people should gird themselves up and kill a cruel king who does not protect his subjects, who extracts taxes and simply robs them of their wealth, who gives no lead. Such a king is *Kaṭi* (evil and strife) incarnate. That king who after declaring 'I shall protect you' does not protect his subjects should be killed (by the people) after forming a confederacy, like a dog that is afflicted with madness". Manu (VII 27-28) states that the great principle of *danda* if properly wielded conduces to the advancement of the three *puruṣārthas*, but if a voluptuous, mean and unjust king wields it, it recoils on his head and destroys the king together with his relations. Kām. 2. 38 makes it clear that *danda* foolishly wielded might exasperate even hermits. The Śāntiparva 92. 19 recommends that a king who has false and very wicked ministers and who puts down dharma should be killed by the people. Even as early as the Tai. S. II 3. 1 it appears that kings were driven away, while the Śatapatha Brāhmaṇa (XII 9. 3. 1 and 3) mentions a king Dutaritu Paumsāyana who had been expelled from the kingdom which had descended to him through ten ancestors. The Sautrāmaṇi *īṣṭi* is prescribed as a rite for a king to regain a kingdom from which he had been driven away (vide H. Dh. vol. II. p. 1227). Śānti 92. 6 and 9, Manu VII 27 and 34, Yaj. I 356 appear to justify at least deposing a king, if not tyrannicide. Similarly, the Sukranitiśāra (II 274-275) states<sup>35</sup> that a king, though of a noble pedigree, should be abandoned, if he violates dharma, if he hates good qualities (in others), lines of policy and the army and if his conduct would lead to the destruction of the kingdom and that the family priest with the consent of the principal

34. अरविशारं हवारे विलोमारमनायकम् । तं वै राजकलिं हन्तुः प्रजाः सन्नत निरुणम् ॥  
अहं को रक्षितुं क्त्वा यो न रक्षति युधिपः । स संदर्थं निहन्त्यः श्वेन सोमनाद् आहुरः ॥  
अनुशासन 61. 32-33; अमत्यापिदसच्चिरो वरयो लोकस्य धर्मदा । शान्ति 92. 19.

35. कुलनीतिवद्वेषो कुलधुतोऽपधार्मिकः । स्यो यदि भवेत् तं त्यजेद्वा विनाशकम् ॥  
तत्पदे तस्य कुलमे कुलधुके पुराहितः । पशुवदुन्मर्ले कृपा रथापयेद्वापहस्ये ॥ सुक्र-  
II. 274-275.

officers of state should place on the throne another scion of the royal family who is possessed of the requisite virtues. Nārada props up the theory of divine right by stating that the king secures dominion over (lit. purchases) his subjects by his austerities (performed in former lives) and therefore the king is their lord (prakīrṇaka 25). Śukranīti I. 20 also brings in the doctrine of Karma 'the king holds the earth by the actions of his former lives and by his austerities.' Compare Manu VII 111-112; Śānti 78, 36. The Śukranītisāra (IV, 7. 332-333) says that brāhmanas may even fight and destroy an oppressive kṣatriya king and would thereby incur no sin. The Yāsatīlaka (III, p. 431) gives examples of kings killed by their subjects, one being a Kalinga king who made a barber his commander-in-chief. In fact in all works on polity we find comparatively little about the king's rights and special privileges, but on the other hand the greatest emphasis is laid on the king's duties and responsibilities. Some works describe the king as a servant of the people whose wages or remuneration for the protection he affords is the taxes he raises. Vide Baud. Dh. S. I. 10. 1, Śukranīti I. 188, Nārada (prakīrṇaka 48), Śānti 71. 10.<sup>36</sup> It may be said here that the apparently inconsistent dicta about the divinity of the king and about his being liable to be deposed or even killed for evil deeds are delivered from two different standpoints and are addressed to different persons. The writers believed in maintaining the *status quo* about the duties of varṇas and āśramas, in the privileges of the respective castes and in the progressive deterioration of dharma in the ages to come and wanted a strong king to preserve the social order; therefore the king was raised to divinity and absolute obedience to his orders was demanded. This was addressed to the people in general. There was danger however of bad kings and ministers oppressing the people by misrule. Hence the king and his ministers were threatened with destruction and death. These dicta were principally meant for the king and his advisers.

In the Kauṭīliya V. 3 we meet with these words "In Rājasūya and other solemn (or elaborate) sacrifices the 'rājā' gets three times the salary given to others who are as learned as he is" (sumānavidyebhyas-triguṇavetanā rājā rājasūyādīṣu

36. अन्ययकारादुचिताद् भूमेः बहुभागसंक्रितात् । वशिः स तस्य विविक्तः प्रजापालन-  
वेतनम् ॥ नारदः (परीर्णक prakīrṇaka 48) ; बलिबलेन धुत्वेन दूषणेनापराधिकम् । शास्त्रा-  
नितेन लिप्तेषां वेतनेन धनामयम् ॥ शास्त्रि 71. 10 ; स्वभावाभूता दास्यते मज्जानां च ह्यः  
कृतः । ब्रह्मणा स्वानिमानस्तु पादमार्थं हि सर्वदा ॥ शुक्र नीति I. 188.



krātuṣu). Jaysawal (in 'Hindu Polity' part II p. 136) seizes upon this passage to show that the king was a salaried person like the prime minister or the commander-in-chief. The words 'in Rājāsūya and other *kratus*' should have raised doubts in his mind about his interpretation, but he entirely missed the significance of the passage. Kauṭilya in that passage is not referring to the king himself but to his representative or deputy when the king is engaged in numerous ceremonial duties during sacrifices of long duration like the *Aśvamedha*. The *Āp. Śrautasūtra* (XX. 3. 1-2), *Baudhāyana Śrauta* XV. 4, *Satyasādhya Śr.* XIV. 1. 24-25 state that the *adhvaryu* priest was to deputize for the king when the latter was engaged in the *Aśvamedha*<sup>37</sup> (which was spread over a period of about two years). The salary referred to by Kauṭilya is to be paid to the *adhvaryu* when representing the king. Vide H. Dh. vol. II p. 1232 for this. In X. 3 it is said by Kauṭilya that a virtuous king on the eve of a battle should urge on his soldiers the fact 'I am a wage-earner like yourselves, this kingdom is to be enjoyed by me along with you. You have to strike down the enemy pointed out by me'.<sup>38</sup> Here the theory of the king being a wage-earner or a servant of the State is emphasized in a striking manner.

The word 'rājan' is derived in the *Nirukta* (II. 3) from the root 'rāj' to shine, but the *Mahābhārata* (*Sānti* 59. 125) likes to say that the king is styled 'rāja' since he keeps all people contented, that is, it derives the word 'rājan' from the root 'rañj'. Great poets like Kālidāsa (*Raghu* IV. 12) follow the *Mahābhārata* in this, as also in deriving the word 'ksatriya' from 'ksata' and the root 'traī', meaning one who protects from wound and injury (*Sānti* 59. 126 and *Raghu-vaṃśa* II. 53). Bṛ. quoted in the *Raja*, Dh. K. (I p. 5) appears to derive the word both from 'rāj' and 'rañj' (*balena caturangaṇa yato rañjayati prajāḥ : dīpyamānaḥ sa vapusā tena rājābhidhīyate*).

There are in our authorities germs of several theories about the origin of kingship. Bṛ. X. 173 (which corresponds to

37. अथ ये शत्रुस्याभिषेकारोऽध्वर्युमभिहितान्ति । न आह । ब्राह्मणाश्च राजानमवा-  
च्यतेतौ द्वौ संवत्सरो राजा भविष्यति तस्य शुश्रूषन् वेौ इत्येव न शुश्रूषित्वे सर्वस्वं ते  
जायन्तीति । अथाच्यतेतौ द्वौ संवत्सरो राजा भवति । यजमान इतीतरमाचक्षते । वी. ओ.  
XV. 4.

38. निदिदृशकालो धर्मिष्ठः संहस्य दण्डं ब्रूयात् । तत्पणेतनोरिति । भवजिः सह भोग्य-  
मिदं राज्यम् । नृपाभिहितः परोभिदन्त्यः । कौटिल्य X. 3. p. 367.

Atharvaveda VI. 87 and 88. 1-2) has been taken as an election hymn by some writers (e. g. Jayaswal in 'Hindu polity' p. 7). But one is constrained to say that it is probably nothing of the kind. The only words that may lend some colour to the theory of election are 'let all the people desire thee (as king)' in Rg. X. 173. 1, but those words may apply as a benediction even in the case of one who is already a king. In the Atharvaveda III. 4. 2 there<sup>32</sup> is a reference to the election of a king by the people 'the people (visah) chose thee to govern the kingdom, these quarters, the five goddesses (chose thee)'. In Atharvaveda III. 5, 6 and 7 also there is a faint allusion to the election of a king by nobles, king-makers, sūtas and headmen of villages, by the clever makers of chariots and the skilled workers in metals. These 'king-makers' are called 'ratnins' in other Vedic texts and the Tai. Br. I. 7.3 states in connection with the twelve offerings in the Rājasūya called 'ratnīnām havīmṣī' that the 'ratnins' give the (rāṣṭra) kingdom (to the king). Vide H. Dh. vol. II p. 1215 n 2648 and p. 1216 for the 'ratnins'. So it appears that the conception was that the king got the kingdom from nobles, high functionaries and the common people. For the coronation bath (and its implications) mentioned in the Ait. Br. vide note 105 below. The Ayodhyākāṇḍa (chap. 1 and 2) describes how Daśaratha when he grew old desired to make his eldest son Rāma the Crown Prince (yuvarāja), how he called together an assembly of vassal kings, citizens and rural inhabitants and placed before the assembly his idea, how they acclaimed loudly the old emperor's proposal and readily gave their consent. This shows that though kingship became hereditary in course of time some element of popular approval was sought for. But such passages referring to the approval of the people cannot be stretched to mean that the king was chosen by a parliament the members of which were elected by the people. All that happened appears to have been only this that citizens that approved assembled spontaneously and expressed their feelings in the assembly. In the Rāmāyaṇa II. 67. 2 it is said that when Daśaratha died sages like Mārkaṇḍeya and Vāmadeva declared along with the *amṛtins* in the presence of the family priest (purohita) Vasiṣṭha that as Rāma and Lakṣmana had gone into exile and Bharata and Śatrughna were in the Kekaya country, some scion

32. तस्य विंशो वृजती राज्याय स्थानिताः पवित्राः पञ्च देवीः । अथर्व III. 4. 2; ये राजानो राजकुलः सुता वामनश्च ये । उपसीद पर्व पाठे त्वे सर्वोऽनुष्मन्मिहो जनाम् । अथर्व III. 5. 7.



of the Ikṣvāku race should be chosen as king. These sages and ministers are spoken of as king-makers ('rāja-kartārah') here and in chap. 79. 1. In the Ādīparva 44. 6 it is stated that all the citizens of the capital in one voice elected Janamejaya, though a boy, as a king on the death of Parīkṣit and Janamejaya ruled with the help of his ministers and purohita. There are historical examples of the election of kings. The *ksatrapa* Rudradāman was elected king by the people of Surāstra (who at one time formed a republic, acc. to Kautilya XI 1) and he took an oath as stated in his Junagadh inscription in the year 72 (150 A. D.).<sup>40</sup> Vide E. I. Vol. VIII p. 36 at p. 40. Gopāla, the founder of the Pāla dynasty of Bengal (730-740 A. D.), was elected a king (E. I. Vol. IV, p. 243 at p. 248 and Jayaswal's 'History of India,' 150-350 A. D. pp. 44-45). It appears that it was the business of the chief ministers and brāhmanas to propose somebody as king and such persons were called 'rājakartārah'. In Ayodhyā 67. 8 they say 'our country is without a ruler and may therefore encounter disaster'. Arājaka does not necessarily mean in Ayodhyā 67 anarchy but a condition in which there is no king nor ruler. Though this is so, it is not possible to agree with Mr. K. P. Jayaswal ('Hindu Polity', part I, pp. 97-98, 134, 173) that 'arājaka' was 'an idealistic constitution, that it was an extreme democracy almost Tolstolian in ideal, that it was based on a legal and communal basis, that it was a case of extreme individualism in which government itself was regarded as an evil.' Ayodhyā 67. 8-31, Ādi 41. 27 ff., Śānti 67. 3 ff., Matsyapurāṇa 225. 8-9 are the principal passages on arājaka. A perusal of these will convince any one not carried away by the over-patriotic desire to find the latest European thought in our ancient books that *arājaka* was viewed as a state of chaos and the negation of any constitution; that when a country was without a ruler, no private property in anything existed or was respected and people preyed upon each other like fishes (Ayodhyā 67. 31) and that no Tolstolian ideals were present before the eyes of the writers that drew such a harrowing picture of a State without a ruler. The famous Chinese traveller Hiouen Tsiang notices (vide Beal's Buddhist Records of the Western World, 1884, vol. I. pp. 210-216) that when Rājyavardhana was

40. आ मर्भोत्सुत्पत्तिवत्ससुदितराजलनीधारेणमुणतः सर्वेवर्णैरभिगम्य रक्षणार्थं पतिव्ये हुवेन आ गोपौदुमासालुवचमिहुविहुवमसवमिजेनामपत्र संगमिषु : E. I. vol. VIII, p. 36 at p. 40; मातृमन्वाचममोहितं बहुतिमित्तस्याः करं द्राहिताः श्रीगोपाल इति विभीक्ष्णिरसौ चूडामणिसल्लुतः : E. I. vol. IV, p. 243 at p. 248 about गोपाल.

treacherously murdered by king Śaśāṅka, the great minister Bhaṇḍin (who was also a cousin of Harṣa) called an assembly of ministers and made to the young Harṣavardhana a proposal to assume the royal authority, which proposal was backed up by all the ministers and magistrates, that thereupon Harṣa agreed to become king after consulting the oracle of Avalokiteśvara Bodhisattva. After the death of Parameśvaravarman II (of the Pallava dynasty), when the Pallava kingdom was subject to anarchy, the subjects chose a king. For the details of this election, vide the important constitutional document of the Vairakūṭha Perumal temple (Dr. C. Minakshi's 'Administration and Social life under the Pallavas', 1938, p. 38). The Rājataranginī narrates (V. 461-463) that Yaśaskara who was originally a poor man was chosen as king by the brāhmaṇas.

In some other places a theory somewhat like the theory of social contract expounded by Rousseau is adumbrated. The theory of social contract is presented in modern times under two forms. In one there is supposed to be a tacit or explicit agreement between the Government and the people. In the 2nd form it is supposed that a political society was constituted by a compact among individuals (to which the ruler was not a party). This theory puts forward the notion that government depended on the consent of the people. Kauṭilya (I. 13) refers to the legend that Manu Vaiśvata was made a king by the people, who agreed to assign one-sixth of the grain raised by them as the king's share in return for the protection afforded by him. But Kauṭilya is silent as to whether Manu made any promise to the people. Śāntiparva, chap. 59, states how Vainya, the first king, was called upon by the gods and sages to take an oath and how he promised them that he would protect the world, and would carry out his duties as laid down in the science of government and not act at his sweet will.<sup>41</sup> When this theory of an agreement between the king who took an oath and the people spread among the people, the theory of the divine right of kings, if ever seriously held, would recede more and more into the back-ground. Vide Dr. Beni Prasad's 'Theory of Government in Ancient India' chap. VIII and 'Pre-Buddhist India' (1939) by Mr. R. N. Mahta, chap. II pp. 79 ff. and 101 for election of

41. अविज्ञां चाभिरुहस्य मनसा कर्मणा निरा । पालयिष्याम्यहं यौनं बहुवेपसां  
आमकृतं ॥ दध्याय धर्मो नीलुको दुग्धनीतिप्रपात्रयः । तन्मज्जां करिष्यामि स्वयमो न  
कदाचन ॥ शान्ति २. 106-108.



kings and for Buddhist theories of government. It is not possible to hold as Jayswal, U. Ghosal and others do (e. g. 'Manu and Yājñavalkya' II, 'Hindu Polity' part II pp. 54-57) that the theory of social contract was the earlier one and that the theory of divine right of kings was later on propounded by the Manusmṛti to support the brāhmana empire of Puṣyamitra. Jayswal is wrong in saying (in 'Hindu Polity' part II p. 57) 'the theory of the Mānava was never approved or adopted by a single subsequent law-book'. It has been shown above that Nārada and others espoused the same theory. Manu himself eulogises the supreme power of daṇḍa over the king himself (Manu VII. 28). He makes use of both the theories as occasion demands.

The germ of the theory of Divine Right of kings probably goes back even to the Rgveda. Rg. IV. 42 is a hymn of king Trasadasyu, son of Purukutsa. Some of the ideas therein are startling enough. He says 'the gods rely on the might of Varuṇa, while I am the lord of the people (verse 1, *kratum sacante Varuṇasya devā rājāmi kṛteḥ* &c); I am Indra and Varuṇa, I am the wide and the deep Heaven and Earth, I am the son of Aditi (verses 3 and 4)'. Here there is an explicit claim by a king to be identical with the mightiest and greatest gods of the Vedic pantheon. In the Atharvaveda VI. 87. 1-2 it is said about the king 'May all the people long for you, may not the kingdom be lost from your hands, may you stand firm in the world like Indra and may you uphold the kingdom'. In the Śatapatha Brāhmaṇa V. 1. 5. 14 (when describing the shooting of arrows in the Vājapeya) it is said 'the *rājanya* is most manifestly of Prajāpati, while being one he rules over many'. Here the position of the *rājanya* appears to be regarded as due to his being the representative of Prajāpati. In the Śat. Br. V. 4. 3. 4 the sacrificer in the Rājasūya is identified with Indra and it is said that that position is due to two causes viz. (1) his being a member of the kṣatriya order and (2) his participating in a solemn sacrifice. But passages like the last and Śat. Br. V. 1. 3. 4, V. 1. 4. 2, V. 2. 2. 14 *should not* be relied upon in support of the theory of the divine right of kings (as done by U. Ghoshal in 'Hindu Political Theories', pp. 28-29), since every participator (whether a brāhmana or a kṣatriya) in such solemn sacrifices as the Agnistoma and Vājapeya was supposed to possess a celestial body after *dikṣā* and Pravargya and was often spoken of as identified with Indra and other gods. Viśvarūpa on Yāj. I. 350 quotes a long vedic passage (*ūgama*) in which it is stated 'the gods said to Prajāpati 'we shall arrange for a king in human

form by taking from the moon, the sun, Indra, Viṣṇu, Valśra-  
vāṇa (Kubera) and Yama respectively majesty, brilliance,  
valour, victoriousness, liberality and control" and that the king  
thus formed asked the gods to give to him Dharma as his friend  
and that then he would protect the people and then the gods  
made Dharma (i. e. daṇḍa) his friend.

We may examine the theories of the origin of kingship in  
the Mahābhārata. The Śāntiparva deals with this subject in  
two places, in chap. 59 and 67. In chap. 59 Yudhiṣṭhira asks  
the great warrior and statesman Bhīṣma how the title 'king'  
arose and how one man, who has fundamentally the same  
physical and mental equipment as other men, rules over all  
men. These are not really two questions but only two aspects  
of the same question. Then Bhīṣma starts by saying that there  
was originally a state of perfection (*Kṛtayuga*) in which there  
was no king, no kingdom, no punishment and no chastiser.  
Gradually *moha* (delusion or aberration of mind) spread among  
people and then greed, sexual desire and passions arose and  
the Vedas and dharma perished. The gods did not receive  
offerings and went to Brahṁā, who composed a vast treatise as  
stated above (p. 4) that dealt with the four goals of existence  
for the benefit of the world and that was the cream of learning.  
Then the gods went to Viṣṇu and requested him to appoint (as  
king) one who deserved to be the best among men. Viṣṇu created  
a son from his mind called Virajas who did not want to be a  
king. Fifth in descent from Virajas was Vena who destroyed  
dharma and so the brāhmaṇas killed him and from his right  
arm they churned Prthu, handsome, well-armed and proficient in  
the Vedas, Vedāṅgas and Dāṇḍaniti. Gods and sages asked him  
to follow settled dharma, to control his senses and to take an  
oath (set out above in note 41). He was crowned by the gods  
and sages for the protection of the people. Viṣṇu himself esta-  
blished him saying 'Oh king, no man will go contrary to your  
order' and then Viṣṇu entered the king Prthu (verse 128) and  
it is therefore that this world since then bows to kings as to  
gods. In this account the oath administered to Prthu was so  
administered by the gods and sages and not by the people in the  
mass, nor does Prthu expressly promise anything to the people  
as such. Probably it was thought that the promise to the sages  
was impliedly a promise to the people in general. But the  
account, such as it is, rather appears to emphasize the divine  
origin of kingship.



Chap. 67 contains a much shorter version of the origin of kingship, probably because a few chapters before another version has already been given or because it embodies the views of some prior work or teacher. It begins by saying that the most desirable thing for a State is to crown a king, that in a kingless country there is no dharma, no security of life nor of property; that therefore the gods appointed kings for protecting people. Then it proceeds to say that the people assembled and made compacts (*samnyān*) amongst themselves that whoever would commit libel or assault or adultery and break the compacts made by the people should be abandoned. All people went to Brahṃā and requested him to appoint a ruler whom they would all honour and who would protect them. Brahṃā appointed Manu for that purpose, but Manu did not at first like the idea, saying 'Government is a very difficult business among men who are always deceitful and I am afraid of the sinful acts of men'. The people asked him not to be afraid as the sins committed by men will affect the perpetrators (and not Manu) and that the people would give him shares of produce (one-tenth of grain, one-fifth of cattle, one-fourth of their dharma &c.). Manu then agreed, went round the world, terrorizing evil-doers and making them conform to dharma. This story about Manu and the people is alluded to by Kauṭilya (vide p. 31 above). Even here Manu promises nothing expressly, while the people agree to pay taxes and answer for their own sins. There is no doubt that some of the details in the two chapters are different. In chap. 67 there is no reference to an original state of perfection nor to a vast work nor to any oath; so also in one it is Vainya who becomes the first king and in the other it is Manu. But the conception in both is mythological and the fundamental fact in both is the same. God gives a king to the people in both, when they were without a king and degeneracy had set in. Though there is no offer to give a share in chap. 59 yet it is to be inferred from the *pratiṣṭhā* of Vainya that every subsequent king was deemed to do the same. It may be said that in chap. 67 there is a blending of the theory of Divine Right and of an original compact between king and people. In both, however, the emphasis is on the theory of the divine origin of kingship. Śānti 67, 4 states 'one desirous of prosperity should honour the king as one honours Indra', while chap. 59, 139 asks 'what is the cause but the divine character (the king possesses) on account of which people remain under his control'? It must be said that in both

chapters of the Śāntiparva there is no proper theory of contract between king and people.

The Nārada-smṛti as indicated above (pp. 23, 27 and note 27) is a thorough-going advocate of the theory of divine right. It says (prakīrnaka 20-22) 'It is Indra himself who moves about on the earth as king; people can nowhere live after transgressing his orders. Since the privilege of protection is his because of his supreme power (majesty) and on account of the fact that he is benign to all creatures, the settled rule is that whatever a king does is right. Just as the husband, though weak, must be honoured by the wife, so a ruler though devoid of qualities must be honoured by his subjects'. Verse 25 inculcates the duty of obedience to the king.

According to Mr. J. N. Figgis in his book 'The divine right of kings' (1934) pp. 5-6, the theory of the Divine Right of kings in its completest form involved the following propositions: (I) monarchy is a divinely ordained institution; (II) hereditary right is indefeasible i. e. the right acquired by birth and descending by the law of primogeniture cannot be forfeited through any acts of usurpation, or by any incapacity of the heirs or by any act of deposition; (III) kings are accountable to God alone, i. e. a limited monarchy is a contradiction in terms; (IV) non-resistance and passive obedience are enjoined by God i. e. in any circumstances resistance to the king is a sin and leads to damnation and that when the king issues a command directly contrary to God's law, the latter is to be obeyed and also all penalties attached to the breach of the king's law are to be patiently borne. This theory was very much to the fore in the 16th and 17th centuries when in Europe theology and politics were in close union.

It is to be seen how far the ancient Hindu theory agreed with this full-fledged theory of the divine right of kings. As regards proposition I it has been shown above that the Manusmṛti, the Mahābhārata and other works held that the king was either God himself, or god's vicar or vicegerent performing functions similar to those of several gods. As regards proposition II all Sanskrit works recognised hereditary right and primogeniture, but they allowed exceptions as will be shown later on. Our ancient books did not accept the third and the fourth propositions *in toto*. They say that the king cannot do as he likes, that he has to carry out the dictates of dharma, his



power to make new rules is limited and if he does not act up to the rules of dharma he may be deposed, disobeyed or killed. Vide quotations from Sukraniti and Amuśāsanaparva cited above. When Manu (VII. 111-112) says that a king who harasses his kingdom loses his life, his family and his kingdom, it is implied that people are not bound to suffer silently all the wrongs heaped upon them by a bad king but that they may turn round and either depose him or kill him. Piek (pp. 103-104) gives examples from the Buddhist Jātakas where bad kings were killed by the people and others were elected in their place. There is no doubt that obedience to the king is enjoined by Nārada and others, but it is due to the king only so long as he does not swerve from the path of right and virtue. Nārada<sup>42</sup> (prakīrṇaka verses 12 and 32) says 'on account of his majesty and sanctity a king and brāhmana are not to be abused if they do not swerve from the right path; one should not treat with contempt or scold the king, one should abide by his order, since (the penalty of) death may follow from violating it (king's order)'. Here the duty of obedience is not based on the divine origin of kingship, but on the practical worldly ground that an offended king may punish with death. Nārada's doctrine does not lead to the requirement of absolute submission and non-resistance to a wicked king.

It is impossible to hold that the theory of divine right was put forward as a counterblast to the theory of social contract. The theory of divine right would arise very naturally even in the oldest days, while the theory of social contract is the product of a more advanced stage of political thought. The theory of divine right is not more absurd than the theory of social contract and was popularly held not only in India, but in many Christian countries, relying on passages in the Bible such as Daniel 4 and Romans 13, 1-7. The theory of divine right was circumscribed in India by another theory from very ancient times. The cry of the American colonists against England in the 18th century was that taxation and representation went hand in hand; that of the ancient Hindu political and dharmaśāstra writers was that taxation and protection went hand in hand (see n. 45). Band. Dh. S. I. 10. 1. says 'the king being hired for the sixth

42. अमिर्द्वैश्यामिन्दौ च राजा बाह्येण एव च । द्वैतित्वात्पुत्रित्वाच्च यदि न  
स्यान्पुत्रश्च्युतः ॥ तयःकीदा राजा राज्ञा मधुरायां ततो वपः । ततस्तद्वचसि श्वेदेन वार्या चामां  
तदाभया ॥ तस्मात् सै नावजानीयात्ताकोशेय विशेषतः । आज्ञायां चास्य तिलेन वृत्तः स्यात्तद्व-  
चलिकमात् ॥ मारद्व । प्रकीर्णक 12, 25, 32). Vide Manu VII. 12-13. Gautama  
XI. 32. ( rājāśāstryaśāstrinindyaṇ ),

part (that he takes as tax) should protect the subjects'. Yāj. I. 337 states 'The king shares half of that evil which the subjects do when not protected by the king, since he takes taxes (from the people)' and Yāj. I. 334 lays down that a king who protects according to *sāstras* receives the 6th part of the merit (*puṇya*) of the subjects. Śāntiparva (57. 44-45) states 'One should abandon six persons like a leaking boat in the ocean viz. a teacher who does not explain, a priest who does not study the Veda, a king who does not protect &c.' Śukraniti I. 121 affirms 'the gods destroy a king who does not protect, a brāhmaṇa who does not perform austerities, a wealthy man who makes no gifts.' Vide Vasīṣṭha I. 44-46, Gaut. XI. II, Viṣṇu Dh. 8. III. 28, Udyogaparva 132. 12, Śānti 67. 27 (4th part of *puṇya*), Śānti 24. 12 (4th part), Śānti 72. 20, Āśramavāsi 3.40, Amśāsana 61.34 and 36, Kām. II. 10 for the idea that the king receives a part (generally 6th part) of the *puṇya* (and also sin) of the people. The king had to protect even forest hermits who paid no taxes, as he would share in their *puṇya*<sup>43</sup>. Vide Rāmāyaṇa III. 6. 14. Kālidāsa echoes this in the Śakuntala II. 13. Ādiparva 213. 9 looks upon the king who takes the sixth part as tax and affords no protection as the arch-sinner in the world. Śānti 71. 29 says that the spiritual merit that a king gathers by protection according to the sacred code yields rewards for him in heaven for ten thousand years.

From the preceding pages it is clear that the following are put forward as the grounds on which the obligation to render obedience to the ruler is based: (1) the king has divinity in him, (2) the great utility of the ruler affording protection as regards life, liberty and property, (3) the fear of punishment (Manu VII. 22), (4) a primeval contract between the ruler and the people, (5) the interdependence of the ruler and the people as parts of one organism (viz. the State). Vide Medhātithi on Manu IX. 294 for this last.

Who should be king? There were several views on this point. One meaning of the word 'rājan' is 'kṣatriya'. Manu (VII. 1) states that he will declare *rājadharmas* and in the very next verse he employs the word 'kṣatriya' and remarks that a kṣatriya who has undergone the *upanayana saṃskāra* (or *abhiṣeka* according to some commentators) should afford protection to all in his kingdom. Therefore a kṣatriya is the most proper person

43. यत्करोति वरं धर्मं क्षत्रिभ्यस्तदात्मनः । तत्र राजाभ्युपार्गः यज्ञा धर्मेन राजतः ॥ अरण्यकाण्ड 6. 14.





duty of protecting the subjects arises from the fact of taking taxes from them. For everyone when giving wealth does so with reference to a purpose related to himself and there is no purpose except one's protection that is intended in rendering taxes. Hence it is established that whoever receives taxes must secure protection of the subjects". According to Kullūka the word 'rājan' means 'any person who is crowned king and protects the country and capital' and is not used in the sense of 'a person of the ksatriya caste'. The Rājanīratnākara (p. 2) after citing Kullūka and Kāmadhenu states that many hold that 'rājan' means 'any one who takes upon himself the task of protecting the subjects'. The Rājanītiprakāśa holds<sup>46</sup> a long discussion (pp. 10-15), states that the word 'rājan' may have three meanings viz. any one who protects people, a ksatriya in general or a ksatriya who is crowned and ultimately gives it as its opinion that the word 'rājan' is applied in popular usage to any one, whether crowned as king or not, who is the ruler of a country. The Vaijayanti on Viṣṇu Dh. S. III. 44 explains 'rājñām' as 'of ksatriyas' by following the Avesti maxim.

Several brāhmaṇa families founded kingdoms and empires. Puṣyamitra, founder of the Śuṅga empire, was a brāhmaṇa (Harivamśa III. 2. 35 ff, E. I. vol. 20 p. 54); the Kāpyāyanas, who followed the Śuṅgas, were brāhmaṇas and so were the Vākātakas, the Kadambas (vide Talagunda pillar Inscription of Kakusthavarma in E. I. vol. VIII p. 24) and several others. Vide H. Dh. vol. II pp. 122-123 for texts on the question as to when a brāhmaṇa should follow the profession of arms. Manu XII. 100 states that a brāhmaṇa who knows the Veda deserves to be made a king, a commander-in-chief, the wielder of the power of punishment. Kumārila's dictum that persons of all varṇas are seen to be rulers has been already quoted. Gopāla the founder of the Pāla dynasty of Bengal was a śūdra. Manu IV. 61 directs a brāhmaṇa not to stay in a country where the ruler was a śūdra. Medhatithi<sup>47</sup> explains this by saying

46. सुप्रब्रह्मेण जनपदैर्बर्षवर्षोधिकारमाह । प्रमाणान्तरमूला द्वय धर्मा जपद्वये न सर्वे वेदमूलाः । मेघा, on मनु VII. 1; तथा विज्ञानेश्वरोपि अभिवेकादिसुप्रब्रह्मेण राज्ञः राजा-पातर्त्तं परो धर्मः । तथापि सुप्रब्रह्मसममिवाहारादनभिवेकोपि जनपदैर्बर्षवर्षो लोकपति इत्या राजशब्दो वर्तते । राजनीतिव. p. 14; अवेदिन्वापेन राज्ञः क्षत्रियाणां न पापिनामनेव वेदवर्त्ती.

47. यो जनपदः शुद्रवशावर्त्तो तत्र न वसेत् । मन्त्रिसेनापतिदण्डकारिकायाः सर्वं यक्ष-तस्यै राज्ञे यत्र सर्वाः शुद्रजातीयाः तत्र निवासमिषेधोपम् । मेघा, on मनु IV. 61. It is not clear who दण्डकारिक (inflicter of punishment?) is. Should we read दण्डपाशिक (as in the Valabhi plates in E. I. XI. pp. 83 and 94 or XV. p. 237) or दण्डनायक (as in E. I. IX. p. 282 or E. I. XX. p. 7)?



that the prohibition applies only to a country where all the seven high functionaries such as the chief minister, the commander-in-chief are of the śūdra caste; compare Āp. Dh. S. I. 11. 32. 18. Manu's dictum related to a time when there was hardly any śūdra king. But the logic of facts was too much for Medhātithi who had to twist the plain words of Manu. Medhātithi on Manu VIII. 1 remarks that 'persons of other varṇas who subsist by the mode prescribed for kṣatriyas have power over the kingdom and have to protect the people'. Śāntiparva remarks that whoever protects people from the hordes of dasyus and wields the power of punishment according to smṛti rules must be considered as king. The Harivaṃśa (III. 3. 6 'akṣatriyāśca rājāno viprāḥ śūdropajivināḥ') and some of the Purāṇas in depicting the awful degeneracy of the Kali age in a prophetic strain state that the kings in the Kali age will be mostly śūdras and that śūdra kings will celebrate Aśvamedha sacrifices. Vide, for example, Matsya 144.40 and 43 and Līṅga-purāṇa 40. 7 and 42. Hiouen Tsaung notices that in the first half of the 7th century A. D. Sind was under a śūdra king (Beal's B. R. W. W. vol. II. p. 272).

It was almost a universal rule that a male alone was to be the ruler. There appear to have been stray exceptions. The Śāntiparva (33.43-46) enjoins "upon a conqueror the duty to place on the throne of a conquered country the brother, son or grandson of the vanquished king and if no prince be available, then to crown even the daughter of the late king. The Rājatarāṅgiṇī (V. 249 and VI. 332) describes at great length the regime of the notorious queens Sugandhā (904-906 A. D.) and Diddā (980-81 A. D.) of Kashmir. In India for many centuries there has been no Salic Law expressly declaring that daughters cannot inherit land, though on account of the general position of women, the requirements of disturbed times and military necessity women did not generally assume the role of sovereigns. In a copper-plate grant from Ganjam (of about the 13th century) it is stated that when a certain king named Subhākara died his queen ascended the throne and after her her daughter Dandimahādevī, who is styled 'parama-bhaṭṭārīkā-mahārājadhīrāja-paramēsvarī' ruled the earth for a long time (E. I. vol. VI p. 133 at p. 138). Whether the grandiloquent titles were deserved by the queen or were only the exaggerated effusions of a courtier,

48. तेषां वृत्तानि राज्ञानि यथा राजन् सद्वृत्तः । प्राप्नुव दुर्वाच्य पौत्राश्च ते स्वे स्वे राज्ये-  
निषेचन् ॥ ... कुमारी नास्ति तेषां च सम्भवास्तत्रानिषेचन् । शान्ति 33. 43 and 45.

It is clear that the widow and daughter of the last male ruler succeeded to the throne. The *Raghuvamśa* (XIX. 55, 57) states that the widowed queen of king Agnivarna sat on the throne and carried on the government with the help of hereditary ministers.

Apart from conquest and election in rare cases, monarchy was hereditary and generally descended by primogeniture. The passage from the *Satapatha Brāhmaṇa* (XII. 9.3, 1 and 3) mentioning the descent of kingship for ten generations in succession has already been referred to (p. 26). Though succession was hereditary it was the general rule that the eldest son ascended the throne when the reigning monarch died or abdicated. The rights of the eldest son or daughter as against the younger son or daughter were very jealously guarded in the vedic age. It has already been shown how marrying before one's elder brother or sister was condemned in the vedic age and also in the times of the *smṛtis* (H. Dh. II. pp. 546-549). Even the *Rgveda* several times refers to *jyauṣṭhā* (rights of seniority) of Indra (Rg. I. 5. 6, III. 30.3). The *Tai. S.* II. 2.11.5 states that the gods agreed to treat Indra as the 'jyauṣṭha' (the eldest) and *Tai. S.* II. 5.2. 7 refers to the ancient practice of giving all wealth (of the father) to the eldest son. The *Alt. Br.* 19.4 narrates the story that the gods did not accept Indra's position as the eldest and most exalted among them and that Indra then induced *Bṛhaspati* to perform the *Dvādaśāha* sacrifice for him, whereby he secured that position. The *Nirukta* II. 10 sets out the interesting story that *Devāpi* and *Śantanu* were two brothers, scions of the Kuru family, of whom *Devāpi* was the eldest, but *Śantanu* the younger one got himself crowned king and so *Devāpi* practised austerities. The result was that there was a drought in *Śantanu*'s kingdom for 12 years. The *brāhmanas* said to him 'You are guilty of having violated *dharma* in that passing over the eldest brother you got yourself crowned. Therefore God does not send down rain'. Then *Śantanu* desired to give the kingdom to *Devāpi*, who however said that he would be his *purohita* and make him perform a sacrifice. The *Rgveda* hymn X. 98 was then composed by *Devāpi* for bringing down rain. This story shows how long before *Yaska* the popular belief was that it was a great sin to

49. *हस्ताश्वेदं पुत्रं पुत्रेण निवसामवन्ति* (H. Dh. II. 5. 2. 7. *Āp. Dh. S.* (II. 6. 14.12-13) cites this text and says that it is a mere *anecdote* and not a *śāstric* and gives it as its own view that sons equally share the paternal wealth.



pass over an elder brother in marriage and other matters and doing so brought down the serious displeasure of the gods. Vide *Brhad-devatā* VII. 156-157 and VIII. 1-9 for the same story in a little greater detail, viz. that Devāpi suffered from a skin disease, that when Devāpi said to the subjects that he did not deserve the kingdom and that Śantanu should be their king, the subjects crowned Śantanu as king. When Yayāti desired to pass over his elder sons Yadu and others because they disobeyed him and wanted to make the younger Pāru his successor the brāhmanas and citizens protested 'How can the younger son secure the kingdom passing over the elder one<sup>50</sup>? Arjuna upbraids Bhīmasena who got enraged against Yudhiṣṭhira 'who would act against one's eldest brother that follows the path of dharma?' (*Sabha* 68.8). In the *Rāmāyaṇa*<sup>51</sup> Daśaratha addresses Rāma (II. 3.40) 'you are born of my eldest queen, who is of the same class as myself (i.e. of kṣatriya blood)' and Vasiṣṭha says to Rāma 'Among all Ikṣvākus the eldest son becomes the king; a younger brother is not crowned king when the elder exists' (II. 110.36). The *Ayodhyakāṇḍa* in several places (8.23-24, 101.2) reiterates the idea that all the sons of a king do not succeed but only the eldest, although the other sons may be equally fit and endowed with qualities. Kautīliya (I. 17)<sup>52</sup> states that people esteem rulership going to the eldest except in the case of some calamity. *Manu* IX. 106 says that by the very birth of the eldest son, a man becomes free from the debt he owes to his *pitṛs* and therefore the eldest deserves to get everything from the father. The *Rājadharmak.* (pp. 234-235) after quoting the *Kalikāpurāṇa* and the *Rāmāyaṇa* lays down the following propositions: (1) the eldest son of a king alone succeeds in preference to the eleven kinds of secondary sons (whether he is junior or senior in age); (2) if the son of a junior queen (of the same caste) is senior by birth, he succeeds in preference to the son of the senior queen,

50. कर्त्तव्येष्टाभितिक्रम्य कर्त्तव्याय राजधर्मोति । ... मातापित्रोर्बन्धनकुञ्जितः पश्यत्यस्य पाः  
सुतः । स पुत्रः दुष्टवत्तस्य वर्तते पितृमातृदुः । आदिपर्व 85, 22 and 25 = वाङ् 93.  
79 and 81.

51. उपेष्टापामपि मे दास्यं सपुत्र्यां सपुत्रः सुतः । उत्पन्नस्यैव पुत्रोपेष्टो मम राजात्मजः  
मित्रः । ... तस्मात्सं दुष्टवद्वेगेन यौवराज्यमवाप्नुहि । अपोरथाकाण्ड II. 3. 39-41. These  
are quoted in *राजधर्मको.* p. 234 and *राजधर्मकाण्ड* II. p. 13 (with variations).  
इत्याकुलां हि सर्वेषां राजा भवति पूर्वजाः । पूर्वजे नावराः पुत्रो उपेष्टो राजाभिविचरते ॥  
अपोरथा 110. 36.

52. अन्त्यजस्यैव वैश्वस्य उपेष्टभागी (!) इ पुत्रपते । कौटिल्य I. 17 last verses  
but one.

who (son) is younger in age; (3) if two sons are born to two queens at the same moment, the son of the senior queen is preferred; (4) if twins are born to the senior queen, the son who is born first is to be preferred.

If the eldest son suffers from a physical or mental defect (such as blindness or lunacy) he is to be passed over and his younger brother becomes king (vide *Manu* IX. 201 for grounds of exclusion from inheritance). *Ādiparva*<sup>53</sup> 109. 25 states that *Dhrtarastra* because he was blind did not succeed to the kingdom. Vide also *Udyoga* 147. 39. The *Śukranītisāra* (I. 343-344) states that if the eldest prince suffers from deafness, dumbness, blindness, leprosy or impotence he is unfit to rule and that in such a case his younger brother or son should succeed.<sup>54</sup> The *Śukranītisāra* further points out that by dividing a kingdom among the several princes no benefit results, but on the contrary the small parts would fall an easy prey to enemies; therefore when the eldest alone succeeds he should make his younger brothers provincial governors or superintendents over the treasury, horses &c. (I. 346-348). The *Rajadharmaśāstra* lays down a few additional propositions: (1) even if the eldest does not succeed owing to some mental or physical defect, his son's right will remain intact and R. D. K. quotes the words of the fisherman chief to *Bhīṣma* in *Ādi*. 100. 92.<sup>55</sup> The *Bālabhāṭṭa* on *Yaj.* I. 309 and *Rajantiprakāśa* p. 40 say the same. Another example is that of *Aśvameṣa* who became king when his father *Asamaṇja* was exiled from the state by *Sagara* for his misdeeds. (2) When a younger son is crowned king because the eldest is disqualified, then after the former's death his son succeeds and not the son of the disqualified eldest son who is born after the coronation of the younger (e.g. *Yudhiṣṭhira* deserved the kingdom on *Pāṇḍu*'s death and not *Duryodhana*). The *Nītivākyaṃ* (sec. 24 p. 249) lays down the order of succession in the case of kings as follows: the son, full brother, half-brother, uncle, a male of the same family, daughter's son, a stranger (who is either elected or who takes up the kingdom<sup>56</sup>).

53. धृतराष्ट्रस्य च धृष्टकेतुश्च न मरुचक्षत । आदिपर्व 109. 25 quoted by राज-धर्मको. p. 235.

54. उद्योगेऽपि बधिरः कुर्वी मूर्खोऽप्यः पण्ड इव च । न राजवाहो महेन्द्रेव ज्ञाता तस्युच एव हि । शुकनी. I. 343-344.

55. तत्रापर्व महेन्द्रेव तत्र नः संज्ञो महात् । आदि 100. 92.

56. सुतसोऽदिसपरनपितृपुत्रकुलवदोहिवाग्यमुकेषु पूर्वपूर्वमात्रे भवत्युत्तराय राज्यवशा-वाप्तिः । नीतिवाक्यवाच्य ( राजरक्षासमुद्देश ) p. 249.



Sometimes a king selected a younger son to succeed him. There are famous historical examples. The great Gupta Emperor Samudragupta though a younger son was nominated by his father Chandragupta I to succeed and by his brilliant and most successful career Samudragupta more than justified the choice. Vide the Allahabad Pillar Inscription verse 4 (Gupta Inscriptions p. 6). Similarly Chandragupta II, though younger, was nominated by his father Samudragupta to succeed himself. Yayāti selected his youngest son Pūru because he was devoted and obedient and the eldest and other sons disobeyed him. Vide Adiparva chap. 75 ff. and above p. 42. The principle of hereditary succession was so strong that even a boy king was placed on the throne. Vide Raghu. XVIII 39.

In almost all works on rājasāstra there is a disquisition on the qualities that a good king should possess. Vide Kauṭ. VI 1, Manu VII 32-44, Yāj. I. 309-311 and 334, Śaṅkha-Likhita quoted in R. D. K. III. p. 14 and Rājantī-prakāśa p. 116, Śānti 57, 12 ff. and 70, Kām. I. 31-22, IV. 6-24, XV. 31, Mānasollāsa II. 1. 1-9 (p. 29), Śukra I. 73-86, Viṣṇudharmottara II. 3. Only one or two passages can be set out here. Yāj. (I. 309-311 and 334) states 'a king should have great energy, should be generous, mindful of past (good or bad) turns done by others, dependent on those who are advanced (in austerities, knowledge and experience), possessed of a disciplined mind, endowed with an even temper (in good or bad luck), born of a noble family (on both sides), truthful, pure (in body and mind), prompt in action, of strong memory, not mean-minded, not harsh (in words or acts), observant of the rules of *dharma* (as to varnas and āśramas), free from vices, talented, brave, clever in concealing secrets (or acc. to Bhāruchi and Aparārka 'clever in scenting the secrets of his enemies'), guarding the weak points of his state, well-taught as regards logic, the science of government, the science of wealth and the three vedas. He should be forbearing towards brāhmanas, straightforward towards his friends, wrathful towards his enemies, and should be (kind) like a father towards his servants and subjects'. Manu VII 32 is very similar to Yāj. I. 334. The Mit. says that the qualities specified in Yāj. I. 309-311 are *antarmāṅga* (inward or more essential). The 2nd quality 'sthūla-lakṣa' occurs also in the inscription of Rudradāman (E. I. vol. VIII. at p. 44). From I. 312 Yāj. states the *bahirmāṅga* qualities viz. selection of ministers, purohita and sacrificial priests, gifts to worthy brāhmanas, protection &c.

Kauṭilya VI. 1 contains several lists of the king's qualities from several points of view. First, there is a list of qualities that make the king win the heart of the people (or make him approachable) viz. being of a noble family, godly, spirited, consulting the aged, virtuous, truthful, not failing in his promises, grateful, taking broad views (not pusillanimous), highly enthusiastic, not given to procrastination, powerful enough to control his feudatories, firm in mind, having a council of ministers of no mean calibre, desirous of self-discipline. These are called 'ābhigāmika-guṇas' which word occurs in the Palitana plates of Dharaśena II (of Valabhi) in E.I. vol. XI p. 83 and in the Māliya plate of the same king (Gupta Ins. pp. 164, 169). The Daśakumāracarita VIII appears to make a pointed reference to this list when it makes a character say that the king (there referred to) has in him all the qualities beginning from good family (sarvavātina-sampad-abhijanāt-prabhṛti &c.) Then the intellectual qualities he should possess are: desire to learn, study, understanding of what is studied and retaining it, reflection, discussion and devotion to the principles accepted after discussion. Almost the same qualities of the intellect (*dhi*) are mentioned by Kām. IV. 22. The word 'śakyasāmanta' (in Kauṭ. VI. 1) occurs also in Agnipurāṇa 239. 4. The qualities that are the different aspects of his enthusiasm (or energy) are: valour, non-endurance (of the might of others), quickness (of action) and assiduity. The same occur in Kām. IV. 23. Then follows a long list of qualities that go to make up the personal endowment of the king (*ātma-sampat*). Gauṭ. (XI. 2, 4-6) requires that the king should do what is right (acc. to śāstras) and speak (or decide) rightly, should be pure (at heart and externally), should control his senses, be possessed of qualified servants and endowed with knowledge of the means of policy, should be even-handed towards all his subjects and look after their welfare. The long list of Śāṅkha-līkhita agrees more or less with those of Kauṭilya and Yāj. Śāntiparva 70 states that the king should possess 36 qualities, viz. he should not speak bitterly, he should be godly, not wicked, not haughty, of agreeable address &c. Kām. I 21-22 mentions 19 qualities that lead to the well-equipped personality of the king (*ātma-sampat*), viz. study of śāstra (Dandanīti), intellect, serenity, cleverness, boldness, power of comprehension, energy, eloquence, firmness, capacity to endure the worries of adversities, majesty, purity, kindness, liberality, truthfulness, gratefulness, noble family, character, self-restraint. Then Kām. in IV. 15-19 sets out the qualities called *ātma-sampat*, which



generally agree with Kauṭilya's enumeration (in VI 1). Acc. to Kām. IV. 24 liberality, truthfulness and valour are the three greatest qualities in a king, who, when endowed with these, acquires all other qualities. The Mānasollāsa (II. 1. 2-7) first enumerates 44 qualities such as truthfulness, spiritedness (which agree more or less with Kauṭilya's enumeration) and then states that the five most essential qualities in a king are truthfulness, valour, forbearance, liberality and capacity to appreciate the worth of others. The Agnipurāṇa (239. 2-5) enumerates 21 qualities such as noble family, character &c. In the Parāsurāma-pratāpa 96 qualities are enumerated in the Rājavallabhakāṇḍa (Ms. 239 of Viśvānabhaṅg collection II. folio 21b). The Sabhāparva 5. 107-109 and Rāmāyana II. 100. 65-67 require the king to avoid 14 faults viz. atheism, falsehood, hot temper, carelessness, procrastination, not seeing the wise, laziness, addiction to five pleasures of sense, considering state matters alone (without *mantrins*), taking counsel with those who do not know politics, not starting to do what is decided upon, not guarding secret royal policy, not practising auspicious acts, taking up undertakings on all sides at one and the same time. Vanaparva 251. 5 says that subjects do not like a king who is very timid, very weak, procrastinating, careless and immersed in pleasures on account of vices. Sabhā 5. 125 states that sleep (by day), laziness, timidity, hot temper, softness and dilatoriness are six calamities in a king.

The works on dharmaśāstra and arthaśāstra devote a good deal of space to the education of the king and to his moral discipline. Gaut. XI 3 requires that the king should have received instruction in Trayī (the three Vedas) and Ānvikṣikī. This last has been differently interpreted by different writers. Kauṭ. I 2 says that Ānvikṣikī comprehends Sāṅkhya,<sup>67</sup> Yoga and Loka-

67. संख्यं योगं लोकायतं चैवान्विक्षिकी । ... यदायते चैतासी देवभिरन्वीक्षमाणा लोकस्पर्शोपकरोति भस्ममेतदुद्वे च बुद्धिमयसंघापयति राजानम्यकिंपावेभारसं च करोति । यद्विषयः सर्वविद्यानामुपायः सर्वकर्मणाम् । आख्यः सर्ववर्माणं शब्ददान्विक्षिकी मता ॥ अर्थशास्त्र I. 2. This last verse occurs in वात्स्यायनभाष्य on न्यायसूत्र 1. 1. 1, where the 4th pāda is विद्योद्देशं प्रकीर्तिता. Some read आन्वीक्षिकी (Jolly's ed. of अर्थशास्त्र) but आन्वीक्षिकी seems to be more grammatical and to be the reading of most classical works. The Trivandrum ed. reads आन्वीक्षिकी. Patañjali in his Mahābhāṣya has a sentence बर्हिषः माहुरी लोकायतस्य (Bhāguri expounds the Lokāyata system), vol. III p. 323 on Tānini VII. 3. 45. Later on Lokāyata came to be identified with atheistic views that denied the existence of a soul or the next world. Sāṅkhya on Vedāntasūtra II. 2. 1 and

yata and that it examines the relative strength of the three other *vidyās* with reasons, and thereby benefits the world, steadies the mind in calamities and prosperity and imparts excellence in intellect, speech and actions. It is always the torch of (sheds light on) all *vidyās*, it is the means of (inducing to go in for) all undertakings, it is the source of all dharmas. Kautilya derives the name from the root 'lks' with 'anu' and he takes it to mean the science of ratiocination. It is somewhat strange that Lokāyata is included in Ānvikṣikī, one of the subjects of study for the prince. But it appears from the remarks he makes that Kauṭ. uses it only in the sense of logic based on premises derived from ordinary experience (*loka*) though in later literature Lokāyata came to mean 'nāstika' (atheist, materialist). Acc.<sup>58</sup>

(Continued from last page)

III, 3. 53 and 54 states that the Laukīyatikas held the view that consciousness is a quality of the body (and there is no soul over and above the body). The Tantravārtika runs them down as fools and apes (on Jaimini I. 3. 3). In the Rāmāyaṇa Rāma aka Bharata not to resort to Lokāyatika brāhmaṇas, who, though childish, look upon themselves as learned and who relying on the knowledge acquired by Ānvikṣikī speak nonsense in spite of the fact that there are principal Dharmasūtras (that point out the sensible path). कश्चिन्न लोकायनिकान् बाह्यार्थास्तान् सेवते । अनर्थकुलतां ह्येते बालाः पण्डितमामिनः ॥ धर्मशास्त्रेषु ह्युक्तेषु विद्यमानेषु दुर्बलाः । बुद्धिमत्त्वोक्तिर्कीं माप्य निरर्थं प्रवृत्तिं ते ॥ अपौरुषाकान्त 100. 38-39. The Kāmasūtra (I. 2. 30) says that the Laukīyatikas hold that a kūrūpāṇa (copper coin) which one is certain of is better than a nīṣka (a gold coin) which is doubtful. श्री सांख्यिकलिङ्गकादिसंज्ञिकः कार्वाण इति लोकायनिकाः । कामसूत्र 1. 2. 30. Rājasekhara in his Nāvyamīmāṃsā p. 37 (Gaskell's O. series, ed. of 1934) refers to the opinion of the Laukīyatika logicians that the consciousness in human beings arises from the *bhūtas* (elements) just as the power of intoxication (in wine) is due to the mixture of several ingredients (none of which may by itself be intoxicating). The Nītivākyaṃpī p. 76 remarks "the Lokāyatika view leads to the effectuation of worldly affairs, for the king is able to uproot the thorns of the country by the help of Lokāyata". ऐहिकप्रवहारमसाधनपरं लोकायनिकम् । लोकायततो विराजा राजकण्ठकागुच्छेदवति । नीतिका. p. 76. Vide J. R. A. S. for 1917 p. 175 n. 2, article on लोकायत in J. A. O. S. 1930 p. 132 ff., H. Dh. vol. II p. 359 n.; 'Historical Notices of the Lokāyatas' in the Silver jubilee vol. of the B. O. R. Institute, Poona pp. 386-397.

58. आन्वीक्षिकी समस्तसामुद्रिकचिकित्सण्यमा हेतुविद्या । विश्वरूप on या. I. 306; आन्वीक्षिक्यां तर्कशास्त्रं वेदान्ताद्यं प्रतिष्ठितम् । सुकृतीति. I. 153; आन्वीक्षिकी वेदाद्यधिपद्यः आत्मज्ञानोपयोगिनी न्यायविद्या । राजनीतिप्रकाश p. 118. The word आन्वीक्षिकी is derived as अन्वीक्षा प्रयोजनं. (कटे) अस्याः इति आन्वीक्षिकी acc. to दायिनि V. 1. 109. श्रीरत्नानी on अमरकोश explains 'प्रत्यक्षमामान्यामीक्षितस्य पश्चाद्वीक्षणमन्वीक्षा सा प्रयोजनं प्रस्थाः'; while विश्वनाथ on न्यायसूत्रभाष्य I. 1. 1 'अन्वीक्षादुत्त पश्चात् ईक्षा अन्वीक्षा उत्तममे तन्निर्वाहिका सेवमान्वीक्षिकी न्यायतर्कादिकस्यैवमेव स्वस्तिवते ।'. Vide नीलकण्ठ on शास्त्रि 319, 28 for a similar derivation.



to the *Amarakośa*, *Vāṣṭarūpa* on *Yāj.* I. 306, *Haradatta* on *Gaut.* (XI 3), *Aparārka* and several others *Ānvikṣiki* means 'Logic'. Acc. to *Kām.* II. 7 and 11, the *Mit.* on *Yāj.* I. 311, *Sukraniti* I. 158 it means '*Ātmavidyā*' (Metaphysics), while *Sukraniti* I. 153 and *Rājanīti-prakāśa* p. 118 combine the two by saying that it is logic that leads on to or is useful for acquiring knowledge of the Self. The *Nītimayūkha* (p. 34) includes logic and *Vedānta* in *Ānvikṣiki* and *Mīmāṃsā* and *smṛtiś* under *Trayī*. The *Bārhaspatyaśūtra* (II 5-6) advises the king to follow the *Laukāyatika* doctrines at the time of securing *artha* (wealth) and the *Kāpālika-śāstra* in achieving his sexual and similar desires.<sup>59</sup>

Great divergence of views prevailed as to the *vidyās* that were essential for the education of the king. According to the *Manusmṛti* VII. 43, *Śānti.* 59.33, *Kauṭ.* I. 2, *Yāj.* I. 311, *Kām.* II. 2, *Sukraniti* I. 152, *Agnī.* 238.8, the subjects for the king's education are four viz., *Ānvikṣiki*, *Trayī*, *Vārtā* and *Dandānti*. *Kauṭ.* notes that the school of the *Mānavas* held the view that the *vidyās* were three and regarded *Ānvikṣiki* as a special branch of *Trayī*; that the *Bārhaspatya* school was of opinion that they were only two, *Vārtā* and *Dandānti*, since *Trayī* only acted as a screen (to obscure the intellect) of one (the king) who wants to know the ways of the world; and the *Aśvanasas* regarded *Dandānti* as the only *vidyā* for a king, since according to them, the efforts to learn all *vidyās* are tied down to it (i.e. are ultimately intended to lead on to the mastery of *Dandānti*). It will be seen how the *Aśvanasas* and *Bārhaspatyas* had an entirely secular view in the science of government and divorced it from the study of sacred books and metaphysics in the case of the king. The *Duśakumāracarita* VIII (that displays a deep study of *Kauṭīlya*) says that the *vidyās* for the king are four (catasro rājavidyāś-trayīvārtānvikṣikīdandāntiḥ). The *Bārhaspatyaśūtra* I. 3 (*Dandāntireva vidyā*) holds that *Dandānti* is the only (essential) *vidyā* for the king. *Kauṭīlya* further explains that *dharma* and its opposite are learnt from the three *Vedas*, viz. *Sāmaveda*, *Rgveda* and *Yajurveda*, that the *Atharvaveda* and *Itihāśaveda* (i.e. *Itihāśa* and *Purāṇa*) are the other *Vedas* and that the six *Āṅgas* also (viz. phonetics, ritual, grammar, etymology, metrics and astronomy) are comprehend-

59. सर्वथा लोकापतिकमेव शास्त्रगर्भसाधनकाले । कापलिकमेव कामसाधने ।  
बाह्वृषपरमहंस II, 5-6.

ed in the word 'Trayī'<sup>60</sup>. Śukraniti I. 155 says that the 14 vidyās (enumerated in Yaj. I. 3) are comprehended in Trayī. Gaut. XI. 19 expressly says that in doing his duty of making the people observe the rules of the sacred codes the king would have to rely on the Veda, Dharmaśāstras, the Aṅgas, Upavedas and Purāṇa. In the Rāmāyaṇa, Rāma and his brothers are often spoken of as proficient in the Vedas, Vedāṅgas, in Dhanurveda, Gāndhārvaveda, Rājavidyā &c. (I. 18. 24 and 26, II. 1. 20, II. 2. 34-35, V. 35. 13-14). In the Vanaparva 277. 4 it is said that the princes were proficient in the Vedas with their secret doctrine and in Dhanurveda. In the Ādīparva 221. 72-74 Abhimanyu is said to have learned from Arjuna before he became 16 the Dhanurveda in four sections, the knowledge of *astris*, and the theory and practice of these. Vide also Amuśāsana 104. 146-147. Khāravela in his Hathigumphā Inscription (E. I. vol. XX. p. 79 II. 2 and 5) states that he learnt Lekha (official correspondence), Rūpa (currency), Gaṇanā (Accountancy) and the administration of justice, when he was the crown prince and also Gāndhārvaveda (music). In the Junagadh Inscription of Rudradāman (E. I. vol. VIII at page 44) the Mahākṣatrapa is said to have attained great fame by his deep study, retention, and actual practice of grammar, artha (either lexicography or politics), music, logic and other vidyās and to have been a fine rider of horses, elephants, chariots and a great adept in wielding the sword and shield and in wrestling<sup>61</sup>. The personal attainments of Samudragupta (in Gupta Inscriptions No. 1 pp. 12, 15-16) show how thorough the education of at least some princes was or at least what the ideal about their education was. Vide H. Dh. vol. II p. 364 for the education of princes and Dr. Beni

60. धर्मधर्मो वन्द्याम् । अर्थाधर्मो वार्तावाम् । नयानयो दण्डमौल्याम् । ..... सामर्थ्य-  
जुर्वेदाक्षयी । अथर्ववेदतिहासवेदो च वेदाः । मित्ता कल्पो व्याकरणं निरुक्तं उन्वो ऽथोक्ति-  
मिति चाङ्गुलि । अर्थमात्र I. 2 and 3. In the Raghuvamś XVIII. 50 Kālidāsa speaks of only three princely vidyās and Mallinātha quotes the very words of Kālidāsa cited here and also Kām. II वयसि वार्ता दण्डमौलितिरिहो विद्या मन्त्रमैताः ।  
वन्द्या ऐव विमार्थोऽयं देव सामर्थ्यशिकी मता ॥ It should be noted that the Sāmaveda is here mentioned first. Probably Kaṇṇilya was a student of that Veda. In the Brāhmaṇas and Upaniṣads Ṛgveda comes first in the enumeration, Lu-  
hāṇa and Purāṇa are called the fifth Veda in Chāndogya VII. 1. 2. Compare Agalpurāṇa 238, 9 for words similar to धर्मधर्मो वन्द्याम् etc.

61. सप्तद्वार्यान्धर्वशाखादानो विद्याना मन्त्राणां धारणधारणविज्ञानवर्णमानविदुः-  
कीर्तिना वृत्तमज्जद्वयसिधिरनिदुद्धात ..... (broken) बल्लभापनोद्वज्जिदेन &c.  
E. I. vol. VIII p. 44 l. 12.



Prasad's 'Theory of Government in Ancient India' p. 218 for an ideal course of education for a prince quoted from the Buddhist work, *Sūtrālaṅkāra* of *Asvaghosa*. The *Nītivākyāmrta*<sup>62</sup> adds a long list of the accomplishments which a prince should possess viz. all scripts, valuing of jewels, knowledge of arms &c. On reading the ideal courses prescribed for the education of the prince by ancient Indian writers one cannot help feeling that they were probably actuated by the same sentiments that are attributed to Socrates by Plato in his 'Republic' (tr. by Jowett, ed. of 1875, vol. III. p. 357) viz. 'Until philosophers are kings or the kings and princes of this world have the spirit and power of philosophy and political greatness and wisdom meet in one and these commoner natures who follow either to the exclusion of the other are compelled to stand aside, cities will never cease from ill-no, nor the human race as I believe-and then only will our State have a possibility of light and behold the light of day &c.' The *Agnipurāṇa* (225. 1-4) prescribes that the prince should be taught *dharmaśāstra*, *kāmaśāstra*, *arthaśāstra*, science of archery (*dharmavyeda*), the various arts and crafts by trusted teachers, that he should not be allowed to be associated with those who are angry with the king or disrespected by him or who are greedy and that if it is impossible to impart good qualities to him he should be confined, surrounded by pleasures. The princes were sometimes educated in their own capital or in a nearby college. Vide H. Dh. vol. II. p. 364. Sometimes, it appears, princes went to such famous seats of learning as *Takṣaśilā* (vide *Jātakas* ed. by Fausbøll II. 87, 278, 319, 323, 400, III. 158, 168, 415, 463). The subjects of study there were the three *vedas* and 18 *śilpāni* or *vidyās* (*Jātakas*, vol. II. 87, III. 115). *Kauṭilya* (I. 4) explains that *Vārta* is constituted by agriculture, the rearing of cattle and trade; it benefits (the State) by bringing in grain, cattle, gold, baser metals, and free labour; by means of *vārta* the king secures treasury and army whereby he brings under control his own side and the enemy. In the *Saṃhita*<sup>63</sup> 5.79 and *Ayodhyakāṇḍa* 100.47 it is declared

62. शिक्षादापकियाश्चनः राजदुक् सचांहु लिपिषु वसंख्याने पदमामनयोकमर्तुनि  
नीत्यामनेषु रत्नपरीक्षायां संयोगवदरणोपकाशविद्यासु च । नीतिका. p. 161.

63. वार्तायां संभितस्तान् लोकान् दुष्टमेधते ॥ सभा. 5. 79, अथोऽथा 100. 47; पद्या-  
करवित्तवाभिः दुष्टा मोजाविपोषणेः । वार्तायां धारते सर्वे धर्मैरेतैर्हिजातिभिः ॥ वनपर्व  
150. 30; वार्तामुल्लोकां लोककल्याणाय धारते सदा ॥ शान्ति 68. 35; गहि वार्तादुष्टं लोकौ  
वार्तामुत्तुङ्गं केवलेषु । शान्ति. 263. 3; वार्तासमुद्धौ सर्वाः समुद्धौ राजः । तस्य कष्टं  
संसारमुद्धौ वरप कुर्वित्तमः साक्षात्तः समुद्धौवाम् च । नीतिका. p. 93.

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that when the world relies on *vārtā* it easily prospers. The Śānti-parva (263.3) gives the warning that this world would cease to exist if *vārtā* was given up, that this world is rooted in *vārtā* and is sustained by the three vedas (68.35). The Vanaparva (150.30) states that the whole world is sustained by *vārtā* i.e. by merchandise, mines, trade, agriculture and tending cows, she-goats and ewes. The Nītivākyaṃṛta (p.93) after defining *vārtā* as above emphasizes that the king secures the abundance of everything when *vārtā* is prosperous and that the man who has his own agriculture, milch-cattle, plot for growing vegetables and a well in his own house has indeed all the pleasures of this world. These quotations indicate what importance was attached to agriculture and the economic structure of society. The result is that in the Arthasāstra economic matters occupy a very large space.

Kauṭilya (I.5) starts by saying that the three vidyās (except *dandanīti*) in the case of the prince depend upon *danda*, that *danda* in its turn is based upon discipline, which is of two kinds, natural and induced (or acquired). Vidyās produce discipline (of the 2nd kind) in him who possesses the qualities of intellect specified above. Then he goes on to say that the prince should learn the alphabet and arithmetic after his *aula* is performed (in the 3rd year or later) and after *upanayama* he should learn the three vedas and *ānvikṣiki* from the *śiṣyas* (those learned in the veda), *vārtā* from the heads or superintendents (of the various departments thereof) and *dandanīti* from expounders (of the *vidyā*) and from practical politicians. Vide Manu VII 43 (=Mataya 215.54 and Agni 225.21-22) for directions as to from whom the prince was to learn the four vidyās. Kauṭilya prescribes that the prince should study these up to the 16th year, should then marry and that in order to foster the growth of the discipline of the intellect he should always associate with those who are advanced in the vidyās enumerated above (after his 16th year) and that the king should spend the first part of the day in practising the riding of elephants, horses, chariots and in the science of arms and the latter part of the day in listening to Itihāsa which comprises Purāṇa, history, stories, panegyrics, dharmasāstra and arthasāstra. A king whose intellect is thus disciplined and who is devoted to disciplining his subjects also and to doing good to all will be the sole ruler of the earth. The Nītivākyaṃṛta (p.162) defines *vinaya* as 'acting with humility towards those



who excel in *vratas*, *vidyās* and are aged.' Manu VII 38-39. Kām. I 19-20 and 59-63, Śukra I 92-93 (taken from Kām. I 19-20) extol the value and importance of *vinaya* and waiting upon the aged and the learned. Manu (VII 40-42) states that many kings perished with their vast paraphernalia through want of discipline while others, though residing in a forest (i.e. without an army &c.), gained kingdoms through *vinaya*, and names Vena, Nahusa, Sudās son of Pijavana and Sumukha Nimi as those who perished through lack of *vinaya* and gives Prihu and Manu as examples of those who secured kingdoms through *vinaya*. Matsya 315.53 is the same as Manu VII 40. Ancient Indian writers harp on the education of the prince so much because their ideal of kingship was that the king should be a *rājarsi* (a royal sage). Kalidāsa frequently speaks of this e.g. in Śākuntalā II. 14 and Raghuvamśa (I 58). They were aware, like Socrates, that until either philosophers became<sup>64</sup> kings or kings philosophers States will never succeed in remedying their short-comings (vide p. 50 above). Not only was an extensive course of intellectual training prescribed for the king, but both dharmaśāstra and arthaśāstra works strongly and frequently insist upon the necessity of moral discipline and the right direction of the emotions and will in the case of the king.

Kautilya (I 6) emphasizes that control of the organs of sense is the cause of (proficiency in) *vidyās* and discipline should be attempted by giving up the six enervating tendencies viz. lust, hot temper, greed, vanity (*māna*), haughtiness or insolence (*veśa*), overjoy. He says that (the whole purpose or insistence of) all śāstras is the restraint of the senses, that even a supreme ruler of the whole earth up to its four borders whose senses are not under control will at once perish and cites two examples on each of these six tendencies, viz. Dāṇakya Bhoja who attempted to rape a brāhmana girl through lust and perished with his kingdom and kinsmen and Karāla king of Videha; Janamejaya (perished) who attacked brāhmanas through hot temper and Tālajāṅgha who did so against the Bhṛguas; Aśa who exacted through greed excessive taxes from persons of the four varṇas and Ajābindu, the king of Sauvira; Ravana who did not restore another's wife through his conceit and Duryodhana who did not give even a part from his kingdom; Dambhodbhava who despised all beings through his insolence and

64. The word 'philosopher' used by Plato has not the narrow meaning of modern times.

Arjuna of the Haihaya dynasty; Vais̥pi through overjoy when he attacked Agastya and also the oligarchy of the Vṛṣnis when they attacked Dvaipāyana<sup>65</sup>. These six evil tendencies are called *śatru-śaḍ-carga* or *ari-ṣaḍcarga*. Kautilya adds that by the conquest of these six evil tendencies Jāmadagnya (Parasurāma) and Ambarīsa enjoyed the earth for a long time. Kām. I. 55-58) and Śukra. I. 144-146 give six of the twelve examples of Kauṭ. and Kām. I. 58 is the same as the last verse of Kautilya I. 6. Vide Mārkaṇḍeya 27. 12-13. In the Vāsavadattā of Subandhu (Hall's ed. pp. 273-276) there is a long list of the kings of antiquity (Pururavas, Nahusa, Yayāti, Sudyumna, Nala and nine others) who suffered owing to some failing or other in themselves. The Udyogaparva (74. 13-18) mentions by name 18 kings who by their evil career destroyed themselves, their friends and relatives (such as Mudāvarta of the Haihayas, Janamejaya of the Nipas, Bahula of Tālajaṅghas, Dhautamūlaka of the Cīnas). This shows that Cīna does not probably stand for modern China in the epic. Manu VII. 44 (= Matsya 215. 55) also emphasizes the necessity for the king incessantly to curb the senses and not to fall a prey to vices arising from *kāma* and *krodha*. Manu (VII. 45-48) enumerates ten vicious tendencies due to *kāma* (desire for pleasures) viz. hunting, gambling, sleep by day, finding fault (with others), women, drunkenness, (excessive indulgence in) dancing, singing and instrumental music, and aimless wandering; and eight vicious tendencies due to *krodha* (hot temper) viz. tale-bearing, violence, treachery, envy, slander, (improper) seizure of property, reviling and assault. Manu further declares (VII. 50) that among the vices due to *kāma*, drinking wine, gambling, women and hunting are the most harmful, each preceding one being worse than each succeeding

65. Most of these stories occur in the Mahābhārata, Purāṇas, and Buddhist works. Vide Jolly's ed. of the Kautilya vol. II. p. 3. But the story of the Vṛṣnis and Dvaipāyana is not known. For Janamejaya (different from the descendant of Arjuna, the Pāṇḍava) incurring the sin of brāhmana-killing, vide Śānti 130. 1. For Arjuna (called Kārtavīrya) king of Haihayas, vide Sabhāparva 22. 24, Vanaparva 115. 12, Anuśāsana 153. 3 ff, Śānti 49. 35 ff. and Āśvamedhikaparva 29, Matsyapurāṇa 43, Vāyo 94. For Agastya and Vais̥pi vide Vanaparva 96. In the Mārkaṇḍeya the instances of kings that came to grief through *kāma*, *krodha*, *lobha* &c. are different except that of Alla (chap. 27. 14-17). For Dambhodbhava vide Sabhā 22. 24 and Udyoga 96. 7 (cr. ed. 94. 7). For the story of Danda who raped a maiden of the Bhṛgu family vide Rāmāyaṇa VII. 80-81. Dāṇḍakya Bhoja is mentioned (along with Rāvaṇa and Kicaka) by the Kāmasūtra I. 2. 44-45.



one and (VII. 52) that among the vices due to hot temper, causing physical injury, reviling and deprivation of wealth are the worst. Manu (VII. 52) has a sly hint that these seven vices are more or less prevalent among kings (*sarvatraivīmūṣaṅginah*) and therefore the only choice is that of the lesser or least of evils. Kautilya (VIII. 3) has a lengthy disquisition on the views of his predecessors about the relative harmfulness of the three vices due to hot temper and of the four due to *kāma* and states his own opinion that *arthadūṣaṇa* meaning loss of the means of livelihood by gifts, exactions (by the king), loss or abandonment of property is more harmful than reviling and *daṇḍapāruṣya* is more harmful than *arthadūṣaṇa*. He points out the benefits derived from hunting viz. exercise, the disappearance of phlegm, bile, fat and sweat, the acquisition of skill in aiming at stationary and moving bodies, the ascertainment of the minds of beasts when they are provoked and occasional travel.<sup>66</sup> These are echoed almost in the same words by Kām. XIV. 25 and in the *Śakuntala* (II. 25) by Kalidāsa. Vide *Saṁhita* 68. 20, *Udyoga* 33. 92 for the seven principal vices. Kām. (XIV. 6 and 7) enumerates the three vices of hot temper and the four of *kāma* and holds an elaborate discussion on their respective demerits. He defines *arthadūṣaṇa* (XIV. 17) somewhat differently (viz. as the abandoning of an important object or of great wealth in order to show that what really merits blame is not so). Vide the *Viṣṇudharmot-tara* II. 65. 12-15 for the two meanings of *arthadūṣaṇa*.<sup>67</sup> Kām. does not agree that hunting has many good points in its favour and advises the king to prepare a separate well-guarded hunting ground of one-half *yojana* in length and breadth if he really desires to hunt (XIV. 28-42). The *Mānssollāsa* (vol. II) in the 15th chapter of the 4th *vimāti* deals with hunting as a sport for kings and points out how a forest is to be preserved for royal hunting and how it is to be guarded and enumerates 31 methods of hunting. Kām. warns the king who wants to retain

66. सुगन्धां तु गन्धानः श्रेष्ठमपि तमेवरेवनाश्रये स्थिरे च काने लक्षपरिचयः कोपस्थाने हि तेषु च सुगन्धां चित्तज्ञानमनोवर्धनं चेति । कौटिल्य VIII. 3; जितशमलं गन्धानाम् आमनेदककक्षयः । अरविरेषु लक्षेयु वायसिद्धिरनुत्तमा ॥ सुगन्धां सुगन्धे-  
तामाहुरग्नये न तत्त्वम् । दोषाः वायव्याः वायस्तस्मात्तद्वृत्तये न हन्तु ॥ काम. XIV. 25-26. The reading कोपनस्थाने in some Mss. of the Kautilya is preferable in view of Kalidāsa's words 'चित्तं मेवकोपस्थानः'.

67. Vide the *Viṣṇudharmot-tara* (II. 65. 12-15) 'अथैव दूषणं राम द्विविधं विवर्ज-  
येत् ॥ अर्थाणां दूषणं चैकं तथा चार्थेन दूषणम् । याकाराणां सत्सुच्येदो दुर्गादीनां समकिया ॥  
अर्थाणां दूषणं योक्तं विपकीर्णत्वमेव च । अदेशकाले यद्वापनस्याने वानमेव च ॥ अथैव दूषणं  
योक्तव्यमन्यवर्तनम् ॥'

his kingdom against fondness for women (XIV. 57-58). He further says that a king may even indulge in fondness for women and may even drink moderately, but he must totally avoid gambling and hunting (XIV. 65). Kautīlya regards gambling as the worst of the vices for a king (VIII. 3 last sentence in prose). In the *Dasakumāracarita* (VIII) there is an elaborate (but ironical) description of the mental and other benefits derived from the four principal vices due to *kāma*. Kām. I. 54 states that hunting, gambling and wine in the case of kings must be condemned, since calamities befell Pāṇḍu, Nala and the Vṛṣṇis (respectively) by being addicted to these. Even an ideal king like Rāma was fond of hunting. Śukra (I. 332-333) points out that hunting has much in its favour, but there is one great defect in it viz. slaughter of animals. Śukra (I. 109-119) denounces gambling, drinking and fondness for women as the worst of vices and points out that Indra, Daṇḍakya, Nahusa and Rāvaṇa came to grief through their passion for women (I. 114) and that a king who is excessively fond of dancers, singers, courtesans, wrestlers, eunuchs and men of low birth falls an easy prey to his enemies (I. 128). Kām. (I. 40-46, which are almost the same as Śukra I. 102-107) gives a poetic description of how animals like the deer, the elephant, the moth, the fish and the bee meet death or become confined by extreme attachment to one only out of the five objects of sense and emphasizes that man who can and does enjoy all the pleasures of the five senses must practise great restraint.



## CHAPTER III

### DUTIES AND RESPONSIBILITIES OF THE RULER.

1 All works are agreed that the first and foremost duty of the king is the protection of subjects. Śāntiparva (68.1-4) notes that all the seven expounders of polity (rājasastrapranatārāḥ) named by it extol protection as the highest dharma of the king. Manu VII.144 states that the protection of subjects is the highest dharma and Kalidāsa in Raghuvamśa 14.67 alludes to this dictum of Manu. Protection consists in punishing internal aggression (such as by thieves and robbers and by persons who invade a man's rights) and in meeting external<sup>68</sup> aggression. Vide quotation from Bṛhaspati below. Gautama (X.7-8) prescribes that the special responsibility of the king is to protect all beings, to award just punishment and that he has to protect the several varṇas and āśramas according to the rules of śāstra and to bring them round to the path of their proper duties when they swerve from it (XI.9-10). Vasiṣṭha (19.1-2) states that the wise say that protection is a life-long *sūtra* in which he has to give up fear and softness of heart. Vas. 19.7-8 and Viṣṇu Dh. S. III.2-3 are similar to Gaut. XI.9-10. The Śāntiparva (23.15) repeats a *gāthā* of Bṛhaspati 'As a snake swallows mice lying in holes, so the earth swallows these two viz. a king who does not fight (an invader) and a brāhmaṇa who does not go on a journey (for acquiring knowledge from famous teachers)<sup>69a</sup>. Manu IX.306 states that the king protecting his subjects according to the śāstra and meting out punishment to those who deserve it performs every day sacrifices in which the fees are one hundred thousand cows (i.e. he secures the spiritual reward of very solemn sacrifices). Yaj. I.335 is to the same effect. Kauṭilya also lays emphasis on the duty to keep the varṇas and āśramas to their duties 'Therefore the

68. बृहस्पतिः । मत्प्रजापालने मोक्षं विविधं न्यायकोटिभिः । परचक्राच्चौरभयाद्वहस्ते-  
मोन्मथावर्तिनः ॥ परामीकस्तेन भयमुपायैः शमयेत्तुष्यः । मत्प्रजापरिभूतानां मत्प्रहं न्यायवृद्धिर्नः ॥  
quoted by राजनीतिविदः, pp. 254-255.

69a. सुमिरेतो निमिरन्ति सर्वो विलसयानिच । राजानं चाविरोद्धारं ब्राह्मणे चापवा-  
नितम् ॥ शान्ति 23. 15. This is attributed to Uśanas in Śānti 57.3 (but the words are द्वाविमो वलन्ते सुमिः सर्वो &c.). Vide also Sabha 55. 14. The same verse is बुकनीतिसार IV. 7. 303.

king should not allow the people to swerve from their duties. He, who keeps dharma intact (without breach), enjoys bliss in this world and the next'. Nārada<sup>69</sup> (prakṛpaka 33) states 'His duty is to protect the subjects, to (honour or) listen to the aged and the wise, to look into the disputes of people and to be energetic in his functions as king'. Śukra (I. 14) says that the highest dharma of the king is to protect the subjects and to put down the wicked. According to Atri (verse 28),<sup>70</sup> to punish the wicked, to honour the good, to increase the treasury in the right way, to deal impartially with litigants and to protect the kingdom—these five are declared to be sacrifices in the case of kings. The Viṣṇudharmottara (III. 323. 25-26) refers to the five sacrifices in very similar words. In Śānti 77. 33 the king's duty to restrain brāhmanas from engaging in unworthy actions is specially emphasized. These passages establish that the principal duties of the king were conceived to be to protect the subjects, to see that the rules of varṇas and āśramas were carried out by them, to punish the wicked and to do justice.

The duty to protect involved fighting and probable death. Therefore the ancient works on dharma-śāstra always insist that it is the duty of the ksatriya to fight and that death on the battlefield is to be his highest ideal. Manu (VII 87-89) enjoins upon the king, when protecting his subjects against invasion, not to run away from battle and promises heaven as the reward for kings who die fighting in battle. Yāj. I. 324 holds forth the same reward for all soldiers who are killed in battle. Vide Striparva 2.16 and 18 and II. 8-9. The Bhagavadgītā (II 31-37) most solemnly declares that there is nothing higher for a ksatriya than a righteous war, that a ksatriya's duty requires him not to quail in battle, that if he dies in battle he goes to heaven and if he survives he rules over the world, that he should fight as a duty without caring for gain or loss, victory or defeat and if he fights with this attitude no sin attaches to him. Śānti-parva 78. 31 states that just as those who join in the bath of the king at the end of the Āsvamedha are purified of all sins, so all

69. तस्य धर्मः प्रजास्थां वृद्धाङ्गीं पसेनम् । दुर्गमे स्ववहाराणस्तु ध्यानं च स्वधर्मम् ॥ वायुः (कौर्मीयक 33); दुष्टस्य परमो धर्मः प्रजानां परिपालनम् । दुष्टनिग्रहणं निर्वपे न नीत्या मे विना क्षुभे ॥ शुकः I. 14.

70. दुष्टस्य दुष्टः दुष्टस्य दुष्टा न्यायेन कोशस्य च संयुद्धिः । अङ्गप्राप्तोऽग्नीषु राष्ट्र-रक्षा वज्रैः प्रज्ञाः कथिता वृथायां ॥ अत्रि verse 28; compare बुद्धयः सतां पूजा परमं च धर्मात्मनः । राष्ट्ररक्षा समाये च स्वहारेषु प्रजासह ॥ शुक्रिणामां महाप्रज्ञाः सर्वाकलम् शासनः । विष्णुधर्मोत्तर III. 323. 25-26.



soldiers (of whatever caste and on whatever side) killed in battle become pure by the destruction of their sins. Manu (VII 94-95) sets out the results for a soldier when he flees from the battlefield. Parāśara<sup>71</sup> III 37 says "Two men pierce the orb of the sun (i.e. reach heavenly worlds) viz. an ascetic endowed with Yoga and a soldier killed while facing the enemy" and the following verses (III 38 ff) dilate upon how the slain warrior is waited upon in heaven by divine damsels. A verse of the Rgveda X. 154.3 (= Atharva 18.2.17) appears to hold that warriors losing life in battle reap the same rewards that those who make gifts of a thousand cows in sacrifices secure.<sup>72</sup> It is probably this passage which Kautilya has in mind when in X.3 he refers to the Veda for inciting the soldiers to fight without regard to life. Ap. Dh. S. (II. 10. 26. 2-3) states that a king, who strives to recover the wealth of brāhmaṇas (stolen by thieves) and dies in the effort, is said to perform a sacrifice, in which his body is the sacrificial post and the fees are incalculable and that other valiant men losing life in fighting for a (good) cause are in a similar position. To die fighting for the protection of cows and brāhmaṇas is specially commended (vide Śānti 21. 19 and 77. 28 and 30). The Viṣṇudharmasūtra III. 44-46 prescribes 'there is no duty for kings equal to losing one's life in battle; those who meet death in protecting a cow, a brāhmaṇa, a king, a friend, their own wealth and their wife enter heaven as also those who meet death in preventing confusion of varṇas (caused by adultery &c.).' On the eve of battle the great warrior Bhīṣma says to his officers 'It is a sinful act for a ksatriya to die in his house from some disease; the ancient code of conduct for him is that he should meet death from steel' (Bhīṣmaparva 17. 11). The same idea is presented in Śalyaparva 5. 32, Śānti 97. 23 and 25.

Kaṁandaka<sup>73</sup> (V. 82-83) makes it clear that the subjects require protection against the king's officers, thieves, enemies of the king, royal favourites (like the queen and the princes) and

71. इतिमौ युधयो लोके सर्वमण्डलमेदिनी । परिब्राह्मणपुत्रकश्च रणे क्षमिषुषे हतः ॥ पाराशर III. 37, quoted by मेधातिथि on मनु VII. 89. The same is उद्योगपर्व 33. 61 which reads युधयमात्र in the first *pāda*.

72. के युधयस्ते पश्येदु क्षुरासौ ये तत्पुत्रजः । ये वा सप्तसद्विष्णुमत्सवीधिदेवादि मण्डलात् ॥ अ. X. 154. 3 = अथर्व 18. 2. 17. This also is quoted by मेधा. on मनु VII. 89. अथर्वशास्त्र (X. 3) has 'केदेवपुत्रक्षुराते - समारुद्रविष्णुना पञ्जानामवभृषेयु मा ते मतिर्वा क्षुराणांमिति ॥'

73. आनुकरोम्यधोरेभ्यः परेभ्यो राजपुत्रभात् । इतिविधिविलोभात् प्रजानां पञ्चधा भवन् ॥ पञ्चमकारमन्तेतदपीहं युपतेर्भवत् । कामन्दक V. 82-83.

the greed of the king himself. As an extension of the king's duty to protect, the works lay down that it is his duty to support students, learned brāhmanas, and sacrificers.<sup>74</sup> Vide Gaut. X. 9-12, XVIII. 31, Kaut. II. 1, Anāśana 61. 28-30, Śaṅti 165. 6-7, Viṣṇudharmasūtra III. 79-80, Manu VII. 82 and 134, Yaj. I. 315 and 323 and III. 44, Matsya 215. 58, Atri 24. The Hindu kings of ancient and medieval India followed this advice with great liberality for centuries and the subject has already been treated in vol. II pp. 113, 856-884. The functions of Government were not supposed to end with the maintenance of peace and order, but Government must be an instrument of the diffusion of culture. The king is also called upon to support helpless and aged people, the blind, the cripple, lunatics, widows, orphans, those suffering from diseases and calamities, pregnant women by giving them medicines, lodging, food and clothing according to their requirements<sup>75</sup>. Vide Vas. 19. 35-36, Viṣṇudharmasūtra III. 65, Matsya 215. 62, Agni 225. 25, Ādiparva 49. 11, Sakhā 18. 24, Virāṭaparva 18. 24, Śānti 77. 18. The Rājantī-prakāśa (pp. 130-131) quotes<sup>76</sup> the Viṣṇudharmottara requiring the king to honour and protect chaste women (pativratas) and Śāṅkha-Likhita to the effect that even ksatriyas and vaiśyas who cannot maintain themselves by the methods prescribed by the śāstras for them should approach the king who should help them with the means of livelihood and they should work for the king in the manner laid down for them and that śūdras also should apply their skill and crafts for the benefit of the king when so maintained.<sup>77</sup> Medhatithi on Manu V. 94 states that when a king supports his subjects in a famine by distributing food from his treasury no question of his being in mourning would come in the way. These provisions for the old, the blind, the widows, orphans and helpless persons and for the relief of unemployed ksatriyas, vaiśyas and śūdras strike one as

74. कतिचिन्नाचार्यपुरोहितभोजिवेषो बह्वृक्षान्पशून्पक्षराशिमित्रवृद्धादकानि यथ-  
येते । ... बह्वृक्षान्पशून्पक्षसन्धनार्थं च राजा विभूषात् । शिवमयजातो यजाताचार्य  
पुत्रान् । कौटिल्य II. 1.

75. कुपयामाद्यद्वृद्धानां विधवाणां च पोषिताम् । बौध्देने च दूति च निर्वन्नेव वश-  
स्पयेत् ॥ शान्ति 80. 24 ( = मत्स्य 215. 62 = अग्निपुराण 225. 25 with slight varia-  
tions); कुपयामादुरानाद्यपशून्विधवाणां बह्वृक्षानोपधारतयाज्ञमाणाद्वैविध्यात् । बह्वृ-  
क्षलिकितो quoted in राजनीति, p. 138; कश्चिद्वन्धाश्च सूकाश्च पशून् स्पृष्टानपशून्धत्वात् ।  
पितेर्वासे धर्मज्ञ तथा यज्ञनितामनि ॥ मत्स्य 5. 124.

76. तत्प्रीतिं यत्नं कुर्वान्पुत्रं च गृहीयति । एकपत्न्यः शिवः सर्वं धारयति  
जगत्त्रयम् ॥ राजनीति, p. 130.

77. राजस्यपैदवाभ्यजीवन्तो राजानमुपलभेयतां तावन्मौ शक्तिः सेविमताः पुत्रकुपार्ता  
स्वस्वधनानुष्ठानेन शिलेयः कारयन् श्रुताः ॥ बह्वृक्षलिकितो quoted in राजनीति, p. 141.



rather modern in tone. In many modern countries the State has become the means of providing services for the greater part of its subjects, not only armed forces and the police, but social services such as education, public health, medical attendance, insurance against unemployment, old age, widowhood, and orphanage, relief of poverty &c. In ancient India, though there were naturally no Acts of Parliament guaranteeing the above services to the subjects, public opinion, the views of eminent writers and the practice of the best kings created an atmosphere in which it was thought that it was imperative for the king representing the State and its resources to encourage learning, to care for the blind, the decrepit, the old and the widowed and to give employment to those who were unemployed. Aśoka constructed hospitals for men and animals (2nd Rock Edict at Kalai in C. I. I. vol. 1, p. 28), alms-houses, rest houses, watering places, shady trees on the highways and irrigation works, visited and supported the aged (8th Girnar Rock Edict in C. I. I. p. 15). In the 2nd century B.C. Khāravela, emperor of Kalinga, declares in his Hathigumpha Inscription (E. I. vol. XX p. 71 at p. 86) that in the very first year of his reign he constructed embankments round the Khibra lake in the Kalinga capital and renovated all public gardens. Rudradāman in the 2nd century A. D. repaired the Sudarāna lake at great cost from his own treasury without levying fresh taxes or benevolences (*prajaya*) or forced labour. The Anuśāsanaparva says that good kings should<sup>25</sup> construct meeting halls, *prapās*, tanks, temples and lodging places for brāhmanas. The Mātṣyapurāṇa 215. 64 remarks that the king should give to those who stay in hermitages food, oil and pots. Vide Ap. Dh. S. II. 2. 4. 21 and Haradatta thereon as to provision for śūdra guests. It is quite possible that these rules of the texts were not literally followed by all kings, but it is well-known how even legislative enactments are carried out by the subordinate staff in all countries including those of the West. One has only to turn to Dickens' 'Oliver Twist' for some indication of the administration of Poor Laws and work-houses in England about a hundred years ago.

As regards the king's daily routine Kauṭ. I. 19, Manu VII. 145-147, 216-226, Yaj. I. 327-333, Sukraniti I. 276-285, Agnipurāṇa 235, Viṣṇudharmottara II. 151, Bhāgavata X. 70.4-17, Nītiprakāśikā VIII. 9 ff., Rajanītiprakāśa pp. 153-169 and other works lay down

<sup>25</sup> शाश्वतव्यवसायानि वैजयापनयति च । बाह्यव्यवसायेन कर्तव्यं स्वयमर्थम् । अश्वमेधवर्षे quoted in पर. न. I. part. 1. p. 466.

detailed rules, which have been already set out (H. of Dh. vol. II pp. 805-806). Every day on rising from his bed the king was advised (by Manu VII. 37) to wait upon brāhmanas learned in the three Vedas and endowed with wisdom and to abide by their directions. Vaa. I. 39-41, Gaut. XI. 13-14 say the same. In giving this advice exaggerated claims were made for brāhmanas which have been already set out before. Vide H. Dh. vol. II pp. 135-136 and Amśāsana 33, 2-8. The king was also expected to show himself to all people every day (Ayōdhya 100. 51, Sabhā 5. 90)<sup>79</sup>.

An extremely high ideal was placed before the king by the Kauṭīliya, the Mahābhārata and other works. In the Arthashastra I. 19 Kauṭīliya<sup>80</sup> proclaims the magnificent ideal 'in the happiness of the subjects lies the happiness of the king, in their welfare lies his welfare; the good of the king does not consist in what is pleasing to himself, but what is pleasing to the subjects constitutes his good'. Similar words occur in the Viṣṇudharmasūtra III. last verse.<sup>81</sup> The Mahābhārata (Śānti 69. 72-73) purports to quote two verses of Aṅgīras (i.e. Brhaspati), one of which says 'of what use is *tapas* to that king or of what use are even sacrifices to him who has well looked after his subjects? He is surely one who knows all dharmas.' Kauṭīliya compares the king to the performer of a sacrifice, in which his *vrata*<sup>82</sup> (in the case of the sacrificer observances about food, scratching the body &c.) consists in being ever active, the sacrifice consists in issuing orders for carrying out the business (of the State), the sacrificial fee (that the king pays) is his

79. कश्चिद्दर्शयते नित्यं मनुष्यान्ममलोकतः । सभायै 5. 90.

80. राजो हि व्रतमुत्थानं यज्ञः कायाभूतासनम् । वृत्तिषा वृत्तिनाम्नं च वृत्तिवत्तया-  
नित्येष्वयम् ॥ यज्ञाहुस्ते सुखं राज्ञः यज्ञानां च हितं हितम् । नाशयिष्ये हितं राज्ञः यज्ञानां तु  
निर्यं हितम् ॥ अर्थशास्त्र I. 19.

81. यज्ञाहुस्ते सुखं राज्ञा तद्गुणैः यथा दुःखितः । स कीर्तिपुङ्क्तो लोकेभिर्यथैव  
स्वयं महीपते ॥ विष्णुधर्मसूत्र III. last verse quoted in राजधर्मकाण्ड p. 15;  
कुला सर्वाणि कार्याणि सम्पद् संपादय मेदिनीम् । पालयित्वा तथा पीयान् परत्र सुखमेधते ॥  
किं त्वय तपसा राज्ञः किं च तस्याध्वरेण्य । सुपालितमजो यः स्वायस्वधर्मविदेव सः ॥  
शान्ति. 69. 72-73. These words remind one of the famous proclamation of  
Queen Victoria in 1837 (called an impossible charter by a notably energetic  
but retrograde Viceroy) which breathes the same high and noble sentiments  
'in their prosperity will be our strength, in their contentment our security  
and in their gratitude our best reward'.

82. Vide Āp. Sr. X. 13-15, Band. Sr. VI. 6 for long lists of observances  
(*vratas*) some of which are set out in H. Dh. vol. II. pp. 1139-1149 and  
*ibid.* p. 1135 for the bath of the sacrificer.



impartiality to all (lit. behaving in the same way to all), and his coronation corresponds to the bath of the person who is consecrated for a sacrifice. Śāntiparva<sup>83</sup> (56. 44 and 46) and Nitiprakāśikā VIII. 2 declare that a king like a pregnant woman should not do what is pleasing to him, but what would conduce to the good of the people and the ancient dharma for a king is to keep the subjects contented. In Śānti 90. 1 and 5 it is said 'the king is there for the upholding of dharma and not for acting as he likes and that all beings have to depend on dharma which in its turn depends on the king'. In Udyogaparva 118. 13-14 a king exclaims 'the wealth I possess is for the benefit of the urban and rural population and not for my own enjoyment; for, that king who at his sweet will gives away what (really is not his but) belongs to others does not become endowed with a spiritual merit nor with fame'. King Marutta is warned by his grand-mother in the Mārkaṇḍeya<sup>84</sup> (130. 33-34) that the king's body is not meant for pleasures but for undergoing great trouble in protecting the earth and carrying out his duties. Ancient writers loved to dwell upon the rule of the king as paternal. Kaṣṭ. II. 1 states that the king should favour like a father those who are outside the rules for remission of taxes. Yāj. 1. 334 requires the king to be like a father to his subjects and servants. Vide Śānti 139. 104-105 for the same idea.<sup>85</sup> In the Rāmāyaṇa II. 2. 28-47 and V. 35. 9-14 the virtues of the prince Rāma are set out in great detail, where it is said that Rāma behaved like a father (II. 2. 39), that he sympathized with the people in their sorrows and was pleased like a father when the subjects celebrated festivals. The Rāmāyaṇa<sup>86</sup> III. 6. 11 declares that it would be a great *adharma* on the part of that king who takes a

83. लोकसख्यमेवात्र राज्ञो धर्मः समात्मनः । शान्ति. 57. 41: यथा हि गर्भिणी हित्वा स्वं विषं मनसोऽनुवृणुते । गर्भस्य हितमाधत्ते तथा राज्ञाप्यसंशयम् ॥ दक्षिण्यं कुरधेष्टं सदा धर्मोऽनुवर्तिताः । स्वं विषं तु परिषण्ण्य यच्छोकाहितं भवेत् ॥ शान्ति. 56. 45-46: the first is नीतिप्रकाशिका VIII. 2 which reads the last (vāda) तथा कुपयिष्यादितिम्. धर्मोऽयं राजा भवति न कामकारणायात् । ... धर्मं तिष्ठन्ति भूतानि धर्मा राजनि तिष्ठति ॥ शान्ति. 90. 1 and 5. वीरजान्महाधौ तु ममार्थं नारमभोजतः ॥ कामतो हि धने राजा याः पारिवर्षं ययच्छति । न स धर्मेण धर्मोऽनुवृणुते यक्षता न च ॥ वक्रोर्ध्व 118. 13-14.

84. राज्ञो शरीरवर्त्म न भोगाय महीपते । क्लेशाय महते दृष्ट्वीत्यधर्मपरिपालने ॥ मार्कण्डेय 130. 33-34.

85. पिता भ्राता श्वशुरः सारता यद्विषमवधौ धनः । सप्त राज्ञो सुखान्तेऽग्न्यनुरात यजा-  
पतिः । पिता हि राजा लोकस्य यजानो योऽनुकम्पिता । शान्ति 139. 104-105.

86. अधर्मः सुमहापापः भवेत्तस्य महीपतेः । यो हरेद् यद्विषयमानं न च रक्षति  
पुत्रवत् ॥ अरण्यकाण्ड 6. 11.

sixth part of the produce (of fields) and does not protect his subjects as if they were his children. These sentiments are echoed by classical poets like Kālidāsa in the Śākuntalā V. 5 and VI. 23 and the Raghuvamśa (I 24). In the Harṣacarita (V) the dying king Prabhākara-vardhana consoles his young and favourite son Harṣa by exhorting him to reflect over the idea that kings are to be deemed to have relatives in their subjects and not merely in agnates.<sup>86a</sup> Asoka also in his Edicts harps on the paternal relation 'all men are my children' (the first separate Jaugadh Edict, C. I. I. vol I pp. 111 and 114).

There were, it appears, several grades of rulers from the most ancient times. The word *rājan* occurs in numerous places in the R̥gveda. It is applied to such gods as Mitra and Varuṇa (R̥g. VII. 64. 2), Varuṇa (R̥g. I. 24. 12 and 13, X. 173. 5). It appears to be used in two senses, viz. (1) 'king' as in R̥g. I. 65. 7, III. 43. 5 ('will you make me the protector of people, the king, O Indra'), IV. 4. 1, IX. 7. 5, X. 174. 4) and (2) 'noble' as in R̥g. IX. 10. 3, X. 78. 1, X. 97. 6 ('where the plants come together as nobles in an assembly' *rājūnah samitāvina*). In R̥g. VIII. 21. 18 it is said<sup>87</sup> 'O Indra who gave thousands and ten thousands is the only king, others are only small chiefs along the bank of the Sarasvatī'. The word 'samrāj' is known to the R̥gveda and is used as an epithet of Varuṇa (in R̥g. VI. 68. 9) and of Indra (in R̥g. VIII. 16. 1) and the word samrājya also occurs in relation to Varuṇa in R̥g. I. 25. 10. In R̥g. VIII. 37. 3 Indra is said to be sole ruler of the world (*ekarāt*). It is not unlikely therefore that the idea of an emperor who had suzerainty over several kings was known, though it is possible that in R̥g. VIII. 37. 3 the word is used only in a metaphorical sense. In R̥g. VII. 83. 7-8<sup>87a</sup> it is said that ten kings though they formed a confederacy could not vanquish king Sudās and that in the ten kings' battle (*dikarājās*) Indra and Varuṇa helped Sudās who was surrounded by them on all sides. A very large number of kings is mentioned by name in numerous places in the R̥gveda (e. g. I. 53. 8 and 10, I. 54. 6, I. 100. 17, VII. 33. 2, VIII. 3. 12, VIII. 4. 2). Besides these it appears that there were

86a. राजभिस्तु वन्धुमन्तो राजानो न जातिभिः । इर्वचति V.

87. चित्र इन्द्राया राजका इक्ष्वाके षके सरस्वतीमनु । पर्जन्य इव ततनन्नि इष्टया सद्यन्मयता इदम् ॥ अ. VIII. 21. 18.

87a. दश राजानः समिता अवजयन् इक्ष्वासनिन्द्रावरुणा न युधुषुः ।... दामराज्ञे परिवृताप विभक्तः इक्ष्वास इन्द्रावरुणावशिक्षतम् । अ. VII. 83. 7-8.





relation to sovereignty over people are not clear. They are probably hyperbolical and grandiloquent words to convey supreme power. Even a brāhmana, according to vedic texts, may perform the Vājapeya if he desires 'svārājya' which means supereminence. Paramēsthīn means 'Prajāpati' and so pāramēsthya simply means godlike power. Further there is no apparent reason why, after rising high from sāmrājya to 'pāramēsthya' there should be a descent to mere 'rājya' and 'māhārājya'. Śāyana<sup>91</sup> takes 'rājya' and 'māhārājya' at the end of the passage as referring to the position of the king in the next world. This is rather far-fetched. Jayaswal (in 'Hindu Polity', part I pp. 89-90 and p. 133) takes these words to mean 'the Bhojas in Asoka's Rock Edicts V and XIII and in Khāravēla's Inscription, on the appearance of Bhojas as rulers in Western India and the town of Bhuj in Cutch and 'vairājya' as kingless system and 'svārājya' as 'self-ruling system'; but this is all unwarranted and is a fair sample of the way in which some of Jayaswal's theories are built up. It passes one's understanding how a paramount sovereign is promised *mirājya* (in Jayaswal's sense) in the Ait. Br. In the Rgveda (V. 66. 6) we have the word 'svārājya' (which probably means the same thing as 'svārājya') in 'Let us strive for an all-embracing sovereignty, which will afford protection to many'<sup>92</sup>. In the Śatapatha Brāhmana the distinction between a king (rājan) and an emperor is very clearly expressed as follows: 'For, by offering the Rājasūya he becomes king and by the Vājapeya he becomes emperor; and the office of king is the lower and that of emperor higher' (V. 1. 1. 13). Śatapatha IX. 3. 4. 8 contains the same idea again. In Śatapatha I. 6. 4. 21 it is said 'before the slaying of Vṛtra he was Indra, it is true; but after slaying Vṛtra he became Mahendra, even as a king (rājan) becomes a māhārāja after obtaining victory'. These passages are sufficient to establish that the idea of a suzerainty extending over many kingdoms was known in the times of the Rgveda and had been fully developed before the composition of the Aitareya and Śatapatha Brāhmanas.

91. सायण (on ते. ब्रा. 37. 2. where also these words occur) explains 'साम्राज्यं धर्मेण पादने गीर्वाणे भोगस्तुष्टिः स्वराज्यमवराधीनात् वैराज्यमिदं ग्यो भूयस्विभ्यो वैशिष्ट्यम् । इन्द्रकर्मैतिकम् । अथास्तुमिदं कुरुष्वते । पारमेष्ठ्यं यजामि लोकमादिः । तत्र राज्यमैश्वर्यं माहाराज्यं तत्रत्येभ्य इतरेभ्य आधिक्यम् ।' वायुपुराण 45. 87 says 'अथ लोकस्तु वै सज्जहन्तरीक्षो विराट्स्त्रुतः । स्वराज्यः स्मृतो लोकः इन्द्रव्यामि विस्तरम् ।'

92. आ यद्वागीध्वजसता मित्र वयं अ सुर्यः । अचिद्वै बहुपादये यमेदि स्वराज्ये ॥ अ. V. 66. 6.



The Aitareya Brāhmaṇa mentions by name twelve emperors of ancient India and the Śatapatha thirteen (XIII. 5. 4. 1-19). Pāṇini explains (V. 1. 41-42) 'sarva-bhauma' as 'the lord of the whole earth'. The Amarakośa states that the words 'rāj', 'pārthiva', 'kṣmābhṛt', 'nṛpa', 'bhūpa' and 'mahīksit' are synonyms and mean 'king', that a king before whom all feudatories humble themselves is styled 'adhiśvara', 'cakravartin', 'sārvabhauma' i.e. these three last words are synonyms. The word 'cakravartin' is derived<sup>93</sup> by Kāśyapāmin as 'one who wields lordship over a circle of kings' or 'who makes the circle (i.e. kingdom) abide by his orders'. The word 'cakravartin', though not so ancient as 'sārvabhauma', has been employed from very ancient times. The Maitri Upaniṣad 1. 4 mentions<sup>94</sup> 15 cakravartins. The Rājanītiprakāśa (p. 58) quotes<sup>95</sup> a passage from the Sāmavidhāna Brāhmaṇa (III. 5. 2) 'the priest should perform the coronation with the Ekavṛṣa Sāman for that king whom he desires to be the sole ruler and whose circle of territory (he does not desire) to be overwhelmed (by an enemy)'. Here probably is one of the earliest references to the derivation of the word cakravartin. In the Mahāvagga (Sālasutta, S. B. E. vol. X p. 102) Lord Buddha is made to say 'I am a king, an incomparable, religious king (dharma-rāja); with justice (dhammena) I turn the wheel, a wheel that is irresistible'. Here the idea of the secular cakravartin is carried into the moral and spiritual sphere. In the Nānāghāt Inscription (of about 200 B. C.) occurs the word 'apratihatacakasa' (i.e.—cakrasya). Vide A S W I, vol. V, p. 50 at p. 60. Khāravela is styled Kalinga-cakravartin in the Mañchapuri record of his chief queen (E. I. vol. XX p. 86n), 'supavatavijaya-caka' (supravṛttavijaya-cakra, in l. 14) and 'pavata-caka' (pravṛtta-cakra in l. 17) of his Hāthigumpha Inscription (E. I. vol. XX at pp. 88-89). Kautilya (IX. 1) defines the land of the cakravartin<sup>96</sup> as the territory on the earth spreading towards the

93. दृपचके राजके वर्तते स्वाम्येन चक्रं राट् वर्तयति वा चक्रवर्ती। क्षीरस्वामी.

94. अथ किमेतैर्वा परेभ्य महाप्रदुर्धराभ्यकवर्तिना केचिन्मुमुक्षुर्मुक्षुर्मुक्षुम्-कुर्वन्त्याभ्यचीयनाभ्यवप्रभ्याभ्यपतिष्ठन्विन्दुहरिभ्यन्द्वाभ्यवीचयन्कु (बहुष ! ) संपत्तिपया-स्वनरपाकसेनादयः। मैत्री उप. I. 4.

95. परमेव कामयेतेकराजः स्वाकारय चक्रं विहृषयेतेत्येकवृदिनामिद्विद्येत्। सामवि-धानब्राह्मण III. 5. 2. q. in राजनीतिः. p. 58. सायण paraphrases चक्रं by मण्डलम्.

96. देशः पृथिवी तस्या विमपसमुद्रान्तरमुदीचीनं राजनमहकपरिमाणमविषङ्ग-चक्रवर्तिषेवम्। कीदृशे IX. 1: कुमारीपुरावृत्ति विन्दुसरोवधि राजनाना दशशती चक्रवर्तिषेवम्। तं विजयमानचक्रवर्ती भवति। काश्यपमीमांसा p. 92. Vide Jayaswal's 'History of India' plate IV after p. 211 where there is a wheel with eight spokes on a pillar with an inscription (vākāṇṭhānam).

north from the sea to the Himālaya, which is a thousand *yojanas* in extent when measured in a straight line. The same idea occurs in the *Kāvyamīmāṃsā* of Rājasekhara (p. 92). Kaṭīliya also employs the expression 'caturanto rāja' (a king of the earth up to its four boundaries). Śānti-parva<sup>27</sup> speaks of a ruler who brings the whole earth under one umbrella. On the birth of Harṣa, the chief astrologer told his father Prabhākaravardhana that the boy would be the leader of the seven cakravartins (Harṣacarita IV). In some works the six cakravartins are said to be Māndhātā, Dhundhumāra, Hariścandra, Purūravas, Bharata, Kārtavīrya. The Sabhāparva (15, 15-16) mentions five emperors of old viz. Yauvanasva (Māndhātā), Bhagiratha, Kārtavīrya, Bharata and Marutta. Vide Dr. N. N. Law's 'Aspects of Ancient Indian Polity' pp. 17-31 for exhaustive lists of ancient emperors, from the Mahābhārata, the Śatapatha Brāhmaṇa and other works. This ideal of cakravartin was set before them by all ambitious and energetic Indian rulers from ancient times. The result was that constant wars took place. We have a galaxy of historical emperors that emulated such mythical heroes and emperors as Māndhātā and Bharata and practically realized the ideal. To name only a few, Candragupta, Aśoka, Puṣyamitra, Bhavanāga of the Bhārasīvas, Pravarasena Vakāṭaka, Samudragupta and Harṣa are great names in our ancient history. Even if this ideal of universal empire had not been there, wars could not have been avoided. That was a very usual thing everywhere in the ancient world. Only about 700 years ago, Britain, which is a very small country compared to India, had three kingdoms engaged in constant warfare.

The Matsya-purāṇa (114, 9-10) first gives the dimensions of Bharata-varṣa from South to North (from Cape Comorin to the source of the Ganges) as one thousand *yojanas*, states that its extent is ten thousand *yojanas* (when measured upwards across the boundaries) and that on all borders of it there are Mlecchas and that Yavanas and Kiratas dwell to its east and west (verse 11) and that the king who conquers the whole of Bharatavarṣa is styled 'samrāt' (verse 15). Vide Brahmapurāṇa 17, 8 ff for almost the same words. The Śukranitisāra (I, 183-187) states that a sāmānta is one whose yearly revenue is from 1 to 3 lakhs of silver karṣas without oppressing the people, the revenue of a māṇḍalika is from 4 to 10 lakhs, that of a rājan is from 11 to 30

27. य इमां पृथिवीं कुर्वन्महेकच्छत्रं पश्यति सः सान्निपदः.



lakhs, of a mahārāja from 21 to 50 lakhs, of a svarāj from 51 lakhs to a crore, of a virāj from two crores to ten, of the sārva-bhauma (who wields suzerainty over the whole earth i. e. Bharatavarṣa) from 11 crores to 50. Though these definitions may be regarded as scholastic and too rigid to have been practically followed they do convey a sufficiently clear idea about the power of a feudatory, a king and an emperor. 'The Sabhāparva' (15, 2) says 'there are kings in each house, who do what pleases them; but they do not reach the position of emperor, which title can be acquired with great difficulty'; and 'that king under whose sole dominion the world abides secures the position of *sāmraj*'. In these and other places 'world' means 'Bharatavarṣa' for which see H. Dh. vol. II pp. 17-18. Sovereignty (*sāmrajya*) consisted in ancient India not necessarily or invariably in acquiring control over vassal kings in all their affairs. Generally the supreme ruler did not hanker after territory so much as after having his superior prowess acknowledged. The descriptions of *digvijaya*s (world conquests) in the Mahābhārata (e. g. of Pāṇḍu in Ādi 113, of Arjuna and the other Pāṇḍava brothers in Sabhā, chap. 26-32) show that there was no aggrandizement by acquiring fresh territory but all that was desired was to make the several kings submit and pay tribute or offer presents. Arjuna expressly says in Sabhā 25.3 that he would bring tribute from all kings and the conquered kings are generally represented as submitting and making presents of gems, golds, horses, cows to the conqueror. 'The Allahabad stone pillar' Inscription of Samudragupta (Gupta Ins. p. 8) states that the *pratyanta* (bordering) kings of Samatata and other countries and the Malava and other tribal oligarchies fully gratified Samudragupta's commands by giving all tribute, by obeying his orders and by coming to perform obeisance. Śānti 96 insists that conquests should be made according to dharma. Empire did not mean imposition of the language or the government system of the conqueror on the conquered country. The conqueror's duty as understood by ancient Indian works was quite different

२८. दृष्टे दृष्टे हि राजानः स्वस्य स्वस्य निर्विकराः । न च साम्राज्यमाप्तास्ते सङ्गाहशब्दो हि कुच्छभाङ्गः ॥ सभा १५. २; दधुर्पस्तु परो राजा पलिनिकरश्च जगत् । न साम्राज्यं महा-  
राजं जगो भवति योगतः ॥ सभा १५. ९-१०.

२९. समस्त-इवाक-कामरूप ..... कर्तुं पुरादिप्रवृत्तपतिभिर्मालबाहुनापमर्षोदमज्ज-  
काभिरवाहुनसमकानिककाकचरपरिकादिभिश्च सर्वकारद्वानाज्ञाकरणेनामागमनपरितो वित्त-  
प्रवृत्तशासनस्य । Gupta Inscriptions p. 8.

as will be presently shown. Kautilya (XII. 1) declares<sup>100</sup> that there are three kinds of invaders, viz. *dharmavijayin* (who is satisfied with mere submission or obelance), *lobhavijayin* (who is satisfied with gain in land and money), *asurvijayin* (who is not satisfied with land and money only but robs the defeated king of his son, wife and life). The *Nītivākyaṃṛta* (pp. 362-363, *Yuddhasamuddēśa*) defines the three almost in the same words. This shows that in the first two kinds of conquests the conquered state retained its own institutions, organization and government intact. Bāṇa gives<sup>101</sup> in very striking language what Harṣa proclaimed when he started against the treacherous king of Gaṇḍa and on *digvijaya*. It appears that even the queens of vanquished chiefs had to perform the duties of maids at the time of the coronation of the emperor and empress, as queen Yaśomati says to Harṣa (in *Harṣacarita* V). Vide *Saṁhā* 31. 73-74 where Bibhīṣana is said to have come with presents to Sahadeva. Aśoka (in Kāśī Edict No. XIII in C. I. I. I, pp. 44 and 46, ed. by Hultsch) speaks of his conquest being *dharmavijaya*. This means that he foreswore greed and cruelty and wanted that his influence be only acknowledged. The Pallava king Śivaskandavarman (of Kāñci) who had performed the Agniśtoma, Vājapeya and Aśvamedha sacrifices calls himself *dharmamahārājādhirāja* (a *dharmavijayī* emperor) in E. I. vol. I p. 5. In the Dūḍiā plate of Pravarasena II, Prthivīseṇa is styled *dharmavijayin* (E. I. vol. III p. 258 at p. 261). Samudragupta's conquest of South India seems to have been only a *dharmavijaya*. As time went on the titles of kings grew in grandiloquence. Aśoka whose empire extended at least from Afghanistan to the Bay of Bengal and included some part of the Deccan and Mysore calls himself 'rājā'. Khāravela is styled only *mahārāja* and Kalingādhipati in the Hāthigumpha Inscription.

100. जगोमिषोक्तारो धर्मसुरलोभविजयिन इति । तेषामन्यपदस्या धर्मविजयी ह्युच्यते । तस्यपदपक्षेण । परेषामपि अथाह धूमिद्वयपक्षेण लोभविजयी ह्युच्यते तस्येनाप्यपक्षेण । धूमिद्वयपक्षेण दारम्यहस्तेनासुरविजयी तं धूमिद्वयपक्षेण ह्युच्यते । अतिक्रुषित । कोटिल्य XII. 1: स धर्मविजयो राजा विधेयमात्रेणैव मनुष्यैः याणाधर्मिणामेषु न व्यभिचरति । स लोभविजयी राजा यो द्वापेण कुतपीति: याणाधर्मिणामेषु न व्यभिचरति । सोऽसुरविजयी वा याणाधर्मिणामेषु न महीमभिलषति । नीतिवा: pp. 362-363. Vide विष्णुधर्मोत्तर II. 145. 21 for धर्मविजयी king and अधर्मविजयी.

101. सर्वेषां राज्ञां सज्जीकयन्तां कराः करदामास शस्त्रवह्यास वा दृष्टान्तां दिशश्चानराणि वा ममन्तु शिरांसि धनुषि वा कर्णद्वरीकियन्तामाज्ञा मोर्षा वा शस्त्रैर्ममन्तु पादुरजोसि शिरस्त्राणि वा घटन्तानजलपः कपिचरायन्ता वा सुषडन्ता धूमस इषयो वा समालम्बयन्ता वेधयन्तः कुतपयन्तः वा सुदृष्टः कियतामाना मक्षरगणसंघे कुपयन्तः पणेषु वा । हर्षचरित VI.



Huviska, the Kuṣāṇa emperor, is styled *Mahārāja-rājātīrāja-devaputra* (E. I. vol. I pp. 371, 386). Samudragupta is simply *mahārāja* (Gupta Inscriptions p. 8). But later emperors styled themselves *paramabhattāraka-mahārājādhirāja* (Gupta Inscriptions p. 70, Indore copperplate of Skandagupta of Gupta year 146 i. e. 465-66 A. D.) or sometimes '*parama-bhattāraka-mahārājādhirāja-paramesvara*' (Gupta Inscriptions No. 39, p. 176 copperplate of the Valabhi king Śīlāditya in 447 of the Valabhi era i. e. 766-67 A. D.). Ancient works are not very particular about the epithets they employ when speaking of a king or an emperor. Santi (68.54) says that a king is praised with the epithets *rājan*, *bhoja*, *virāt*, *saṃrāt*, *keśtriya*, *bhūpati* and *nrpa*.<sup>102</sup> Daśaratha is styled *rāja* in Ayodhya 2.2, and *mahārāja* in 18.15 and 57.32. The Rājantīratnākara (pp. 3-4) holds that kings are of three kinds; viz. emperor (*saṃrāt*), one who pays tribute and one who does not pay even tribute (but is not a *saṃrāt*), quotes several verses from a work of Nārada on politics and states that the words *cakravartin*, *saṃrāt*, *adhiśvara* and *mahārāja* are synonyms. Kings aspiring to be called *saṃrāt* performed the Rājasūya and Aśvamedha in ancient India. The Saṃhāparva 13.30 speaks of Rājasūya as fit to be performed by a *saṃrāt*. Senāpati Puṣyamitra (about 180 B. C.) is said to have performed two Aśvamedhas (vide E. I. vol. XX p. 54, 57). The Ghosundi inscription (E. I. vol. 16 p. 25 and E. I. vol. 22 p. 198) speaks of Sarvatāta, a great devotee of Viṣṇu, as a performer of Aśvamedha. Khāravela (who was a Jain) performed Rājasūya (E. I. vol. XX at p. 79). The Vākātaka king Pravarasena I had performed four Aśvamedhas (E. I. vol. III p. 258 and Gupta Inscriptions No. 55). In the Vākātaka copperplates the Bhāraṣivas are extolled as having performed ten Aśvamedhas (E. I. III. 258 at p. 260). The Śālaṅkāyana king Vijayadevavarman, whose capital was at Vengi in Āndhra, is said to have performed an Aśvamedha (E. I. IX p. 56, about 350 A. D.). The Čālukya king Pulakeśin I had performed Aśvamedha (E. I. vol. VI p. 1 and IX. p. 100) about 550 A. D. Puṣyamitra is styled simply Senāpati in the Mālavikāgnimitra Act V when he sends a message to his son about attending the Rājasūya in which he had been engaged. For the significance of the Abhiśecanīya rite in Rājasūya vide H. of Dh. vol. II pp. 1216-1218. The Kadambas are said to have performed Aśvamedhas in the Nilambur plates (E. I. vol. VII p. 148). The Viṣṇukundin

102. राजा भोजो विराट् सज्जद् अत्रियो वृषलिहृदः । न हविः स्तुपते इत्यद्वैः कस्तं नार्चितुमर्हति ॥ जामिनि 66. 54.

Mahārāja Mādhavavarman performed eleven Āśvamedhas and one thousand Agnistomas (I. H. Q. vol. IX p. 278). Vide H. Dh. vol. II pages 1238-1239 for a few more historic examples of the performers of Āśvamedha.

Kautilya (VII 16) prescribes that the conqueror should not covet the territory, wealth, sons and wives of the slain (in battle), that he should re-instate the late king's kinsmen in their proper places (or positions), that he should instal the son of the deceased king on the throne of his father and adds that the emperor who kills or imprisons the kings that submit and covets their lands, wealth, sons or wives provokes the *maṇḍala* (the circle of States) and makes it rise against himself. Yājñavalkya (I 342-43) prescribes that it is the duty of the conqueror to protect the conquered country in the same way as his own country and the conqueror is to respect the customs of the conquered country, its laws and the usages of the families therein.

The Viṣṇudharmasūtra<sup>102</sup> (III 42 and 47-49) enjoins upon the conqueror not to uproot the usages of the conquered country, to establish in its capital some kinsman (of the slain king) and not to destroy the royal family unless it be of low birth. Manu (VII 202-203) and Agnipurāṇa 236-22 prescribe similar rules. The Rāmāyaṇa (VII 62-18-19) requires the conqueror, after uprooting the king, to establish another king there in order to ensure stable government. Vide Śānti 33-43-46 quoted above on p. 40. Kātyāyana (q. in the Rājantiprakāśa p. 411) prescribes that even when the (vanquished) king is at fault, the conqueror should not ruin the country (for the fault of the vanquished king), since he (the vanquished king) did not start (on his career of) wrong-doing with the consent of his subjects. The Rājantiprakāśa draws from this the conclusion that the ministers with whose consent the war was started may be harassed by the conqueror. This advice was generally followed by ancient conquerors and emperors. Rudradāman (150 A. D.) is styled the establisher of kings that had lost their territories (in the Junāgadh Ins., E. I. vol. VIII at p. 44) and in the Allahabad Stone Pillar Inscription of Samudragupta it is said that his fame travelled over the whole world because of his

102. परदेसावाप्तौ तदेवधर्मोक्तोच्छिन्नात् । ... राजा वरपुत्रावाप्तौ तु सत्रं तानुद्धीक-  
मभिधेयेत् । न राजकुलसुच्छिन्नात् । अथैवाकुलीनराजकुलात् । विष्णुधर्मसूत्र. III. 42,  
47-49; बुद्धस्यापि नोद्धत्य सङ्घार्थं न विनाशयेत् । न यमायुधयो वरमायुधयोपेक्षं यजते ।  
कात्यायन quoted by राजसीलिन p. 411, which adds वेदमन्त्रावादीनामनुष्ठापनादप्ये-  
व नृसिंहात् पीडयेदिति च्येयम्.



having re-established several royal families that had lost their kingdoms (Gupta Inscriptions, p. 8). The Śukranitiśāra (IV. 7:397-399) requires the conqueror to support the well-behaved son and the queen of the vanquished king or to give a fourth of the conquered kingdom to him and only  $\frac{1}{2}$  part of it to one who is not endowed with good qualities and the conqueror may appropriate the whole treasury of the conquered.

The coronation of a king was a very solemn and important ceremony. Reasons of space forbid any lengthy treatment but something must be said about it. In the medieval text-books, various procedures are described from different sources. The Rājanītiprakāśa (pp. 42-112), the Nīti-mayukha (pp. 1-13) and the Rājadharmakauṣṭubha (pp. 237-374), the Rāja. Dh. K. (II. pp. 6-10) quote procedures of coronation from the Ait. Br., the Gopātha Br., the Sāmavidhāna Br., the Brahmapurāṇa, the Viṣṇudharmottara and other works. The procedure from the Purāṇas probably originated when persons of the śūdra caste frequently became kings. The Rājanītiprakāśa<sup>104</sup> (p. 112) says that there being different procedures of coronation rites based on Vedic texts, some hold, following the dictum of Śābara (on Jaimini II 4-9), that the coronation rite should comprehend all the different items mentioned in the several vedic texts (provided they do not contradict each other), while others hold that there should be no comprehensive inclusion of all items but each vedic or smṛti procedure should be followed separately by itself. Mitramiśra concludes that the purohita should follow that course which is nearest to his own sākhā. The Rājadharmakauṣṭubha (p. 339) says that as the rite described in the Viṣṇudharmottara contains the largest number of details, one who is able to do so, may follow that Purāṇa, while for those who cannot do so there is an option or students of the Rgveda may follow the Rgvidhāna mode, of the Sāmaveda the Sāmavidhāna Br. and all may follow the Purāṇa mode of coronation. I shall first briefly indicate what procedure was followed in some vedic texts such as the Gopātha Brāhmaṇa, the Sāmavidhāna Br. and in the Gṛhyasūtras, then point out what was done in the times of the

104. दुर्योक्तानां औमानामभियेकाणामविद्वद्भूतानामेकवैयस्यसंहारिणैकोपिषेकः कार्यः सर्वशास्त्राप्रत्ययमेकं कर्मेति न्यायादित्येके । अग्रे तु औमानां इमातां च तत्तत्पुत्रि-  
त्युपिषादितानामहुपसंहारिणैकेकप्रयोगमिच्छन्ति । तदर्थं चरप दुर्योहितस्य स्वशास्त्राविहितत्वेन  
या यस्तः संनिहितस्तैरेव वेद्याभिषेकः कार्यः । राजनीतिप्रकाश p. 112. On एकं वा संपोष-  
कप्रचोदनास्यपिशेषात्, (Jai. II. 4. 9) Śābara remarks न. चैतदस्ति एतन्ने शास्त्रा-  
न्तरेषु कर्मिद्व इति । सर्वशास्त्राप्रत्ययं सर्वनाद्यन्यप्रत्ययं चैकं कर्म । अधर्मपरित्यागपिशेषात्.

epics and set out the prominent items in the procedure of the purāṇas.

The Aitareya Brāhmaṇa (38) describes the Great Coronation of Indra (*Aindra mahābhīṣaka*) and in that connection mentions how the kings of the Sāvatas in the south were called 'Bhoja' after coronation, the kings of the eastern countries were called 'samrāt', the kings in the west were called 'svarāt' and the kings of the north i. e. of countries beyond the Himālaya (viz. Uttarakurus and Uttaramadras) were called 'virāt'. Then (in 39) it states that the ksatriya king is to be made to take an oath and is to be crowned in the manner of the Aindra Mahābhīṣaka<sup>105</sup>. The oath which the ksatriya is to take before the priest with faith is: 'the merit of sacrifices and good works that belongs to me from the night I was born up to the night on which I shall die, my worlds, good deeds, life, progeny,—these you may destroy if I hate (or prove false to) thee'. Vide note 41 above for the coronation oath in Śānti 59. 106 ff. It will be noticed that this passage of the Ait. Br. contains no undertaking given by the king to the people to rule according to dharma or for their welfare. So this passage cannot strictly be interpreted as postulating a contractual basis for the authority or power of the king, as done by Jayaswal ('in Hindu Polity' part II. p. 28). The Ait. Br. sets out the materials (*sambhāras*) for the coronation of a king (in chap. 39-2) viz. fruits of nyagrodha, udumbara, aśvattha and plakṣa trees, grains of small rice, large-sized rice, priyaṅgu and barley, a couch of udumbara with span-long feet, a spoon with a four-cornered scooped basin of udumbara and an udumbara vessel, on one of which two the other materials were to be placed and curds, honey, clarified butter and rain water gathered when the sun is shining. The mantras to be recited are mentioned in 39-3-4 and the fee in 39-6. In the Rājasūya (to be performed only by a ksatriya) described in the Brāhmaṇas and sūtras, the principal rite is the Abhiśecantya in which the king is bathed with waters brought from seventeen sources in seventeen vessels of udumbara wood. Vide H. Dh. vol. II. pp. 1216-1218 for the rite. The Rājantiprakāśa (p. 92-107) explains the procedure of coronation from the Ait. Br. In the Rājasūya, among the preliminary rites are the offerings

105. अनेनैन्द्रेण महामभिषेकेन इजिर्वं शापयित्वा अभिषिञ्चेत्... स इवात्महं ब्रह्मवा ।  
वां च राविमजापेहं वां च मेतरेन तदुभयमन्त्रेभेष्टादूर्तं मे लोकं सुकृत्मातुः वज्रां वृषीषा  
वद्वि ते ब्रुहोपनिमि । दे. भा. 39. 1.



called 'ratnīnam havīṃśi' (the offerings in the houses of the jewels, which are twelve). Vide H. Dh. vol. II pp. 1215-16. They have a symbolical value. The person to be crowned recognizes the importance of his high functionaries and is declared to be their king and they are supposed to approve of him as king. In the Abhiṣecaniya rite of the Rājasūya, there are two parts, a religious and a popular. First, the adhvaryu and the other priests sprinkle the king with holy water collected from various sources in vessels; then the king's brother, a friendly kṣatriya and a vāsiya also sprinkle him with the holy water. This last is symbolic of the popular approval of the coronation.

The Tai. Br. II. 7. 15-17 deals with coronation. It first gives the seven mantras for seven *dhutis* that are offered. A tiger skin is spread on which the king is seated and he is sprinkled with holy water in which sprouts of barley and *dūrvā* grass are mixed up; the king ascends a chariot to the accompaniment of mantras, then the four wheels of the chariot are touched, the purohita and charioteer are addressed with mantras; Anumati, the Earth (as mother), and Heaven (as father) are implored to approve of the coronation, the king is made to look up towards the Sun and then the king looks on the subjects; the king then undergoes shaving when seated on a chair of udumbara wood, then his arms and head are anointed with milk blended with clarified butter.

The Nītinayūkha pp. 4-5, Rājantiprakāśa pp. 42-43, Rājadharmakāustubha pp. 335-336 quote a passage from the Gopatha Brāhmaṇa<sup>106</sup> on the rites of coronation as follows:—We shall expound the rite of the coronation of the king. Having

106. आभर्षणमेषधवाङ्गणे—अथ राज्ञोभिषेकमिति व्याख्यास्यामः । नित्यमयुजीन-  
म्मारण्यं संसृज्य सोमशकटशाल्यं सोमः शिवानि वस्तीकृत्य च पुनिकं सर्षकं सर्वरसात् सर्व-  
बीजानि । तत्र चत्वारो सोमबीजध्वारो राजवाक्त्वारस्तामाभ्यारो मुनयः कुम्भाः । तान्  
हृदे मरुति सोमं प्रसीतं जनिषाम इत्युक्तेन पूरयित्वा देविपुटे संरुच्यत् कुम्भेषु विलम्बकेषु  
धृत्वात् । सर्षकं सर्वरसात् सर्वबीजानि च मक्षिष्यामर्षेण राजजितैरायुधैः स्वसंघर्षैः  
सोमण्यं संपाठ्य, संघर्षैः संसिक्तीष्वथ राजतेषु, मैत्र्यैरैहोमुच्येस्तांषु, संवेदानं चर्षांषो  
शम्भारीषु, यान्युक्तेन च मुनयेषु । कलशाय कलशाय पूरयित्वा ओजिवैः पवित्रतमे राजान-  
मभिशिञ्चेत् । पुनर्मिन्द्रं च यथादित्या तथैव म इति । इममिन्द्रं यथैव शक्तिं म इति ।  
मिन्द्रासननामहमभिमन्त्रयेत् । यथमभिशिञ्चेत् रसान्वादीषाद् विक्रमश्च दद्याद्भोसहस्रं  
सदृशैः कर्षं हामवरम् । विपुले ययः यामेति मुहूर्त्ते धरो जितशत्रुः सदा भवेदिति । राज-  
नीतिषु, pp. 42-43, राजध. को. pp. 335-336, नीतिमयूख pp. 4-5. There are a few  
variants due to the scribes and the editors not being able to read  
the Mas properly. The कौशिकसूत्र 17. 28 reads 'इममिन्द्रं यथैव शक्तिं म  
which is अयथैवे IV. 22. 1.

collected the materials required such as bilva fruit, viz. sixteen jars, sixteen bilva fruits, earth from an ant-hill, all kinds of husked grains, all liquids, and all kinds of grains (unhusked). There should be four jars each of gold, silver, copper and clay. Having filled them, keeping their mouths up, with water from a deep reservoir of water or a lake to the accompaniment of the mantra 'nāmaināma' (?) and having put the jars down on the surface of the altar, he (the priest) should place one bilva fruit apiece in each of the 16 jars and cast (into the jars) the husked and unhusked grains and all fluids, adding them (to the water) in the golden jars with the mantras called Abhaya (Atharvaveda 19.15), Aparājita, Āyusya (Atharvaveda I. 30) and Svastyayana <sup>107</sup> (Atharvaveda I. 21, VII. 85. 1, VII. 86. 1, VII. 117. 1), in the silver jars, with the mantras called saṁsarāvya (Atharvaveda 19.1) and Saṁskṛtiya (Atharvaveda II. 26), in the copper jars with the mantras called Bhūṣajya (Atharva VII. 45 'janād') and Amhomuc and in the earthen jars with Saṁveśa, Saṁvargya and Śāntātiya mantras and with the Prāṇa hymn (Atharvaveda XI. 4). He should then bathe the king with (the water of) the jars held by very holy and learned brāhmaṇas (śrotriya). He should consecrate the king seated on the throne with the mantra (Atharvaveda IV. 22. 1) 'O Indra, make this my kṣatriya prosper'. (The king) being thus bathed should eat the several liquids, should make gifts of a thousand cows to the brāhmaṇa priests who assist the chief priest, bestow a good village on the chief priest. He (the king) thereby acquires great glory, enjoys the earth and always vanquishes his foes'.

107. For Svastyayana vide H. Dh. II. p. 83 (a). For Āyusya vide Kauśikaśmṛta 52. 18; for Abhaya, Kauśika 16. 8; for Aparājita hymns Kauśikaśmṛta 14. 7 note; for Svastyayana, Kauśika 8. 2n; the Śāntātiya are Atharvaveda I. 6. 1, I. 33. 1, VII. 68, VII. 69. 1 &c. The Amhomuc verses are Atharva IV. 33. 39. Vide Nīlīmāyūkha p. 25 for Aparājita mantras. The राजधर्म-काण्ड (p. 7) quotes from the ब्राह्मपुराण a long passage in which the mantras to be recited by the purohita are stated to be these 'उषोवृक्षं महासन्धानं तपयेज्जात्येवृक्षि । मर्त्यं चैवान्हिरण्यं सप्तधर्ममणीं तथा । असुखममर्त्यं चैव तथा स्वस्वपदं परम् । वैष्णवानां च मन्त्राश्च तथा पौनर्व्युराणपि । सावित्रब्राह्मरीर्वाश्च वादनाय च सर्वथा' and explains अवावाविर्लि त्रयोदश मन्त्राः । यथाः द्वेदमन्त्रासुहेत्यादयः । अपत्तिरथाः आहुः शिखारं इति । सप्तधर्मः आवात्सत्यमिति । धर्ममणः यस्मै अग्ने योरास्तुतुः इति । अमप-स्वस्वपदं यत् इन्द्रं स्तुतिर्या इति । अवावाद् is the first word of वाज. सं. 18. 38, अनतिरथा is वा. X. 103, आवात् सप्तम् is ते. वा. III. 12. 3. 2 and यस्मै अग्ने योरा-स्तुतुः is ते. वा. I. 1. 7. 3, यत् इन्द्रं is अ. VIII. 61. 13 and स्तुतिर्या is वा. X. 152. 2.



The *Sāmavidhāna Brāhmaṇa*<sup>108</sup> (III. 5) describes a shorter rite: "The priest should crown the king when the moon is in the *Puṣya* or *Śrāvana* constellation. Having brought waters (separately in separate jars) from famous holy rivers (like the *Ganges*)<sup>109</sup> and from the sea and having mixed in them rice, barley, sesame and *māsa* (black beans) grains and curds, honey, flowers and gold, he should bathe the king seated on an auspicious throne made of *udumbara* wood on which is spread tiger-skin with the hair outside, from horn-pipes cut off from the horns of living cows to the accompaniment of the *rahasya* mantra 'abhrātṛvyaḥ' (you are without an enemy &c., Rg. VIII. 21.13, *Sāmaveda* 399 and 1489). He should bathe the king to the accompaniment of the *Ekavṛsa* hymn (instead of Rg. VIII. 21.13) whom he desires to be the sole ruler (of the earth) and whose circle of kings is desired by him not to be overwhelmed by an enemy. On the priest performing the coronation rite the king should bestow the best village, a hundred maid servants and a thousand cows and (the king) should be obedient to him (the officiating priest)".

The *Baud. Gṛhyaśeṣasūtra* (I. 23) contains the procedure of coronation, the whole of which is quoted by the *Balambhaṭṭi* on the *Mitākṣarā* on Yaj. I. 309. It is briefly as follows:—On the 5th or 13th *tithi* of the bright half when the moon is in *Puṣya* or *Śrāvana* or in any other auspicious constellation (*nakṣatra*), two *brāhmaṇas* are fed (the day previous). Then a worthy *purohita* is chosen, who mutters certain texts. At sunset the *purohita* makes a lotus-like circle in which are collected the materials viz. waters of the ocean and of rivers mixed with rice, barley, sesame, *māsa* and *pañcagavya*, and a *bhadrāśana* made of *udumbara*, a tiger-skin, and golden jars and horns of cows. In the north-east part of the palace, a *homa* is performed with eight thousand *āhuti*s (oblations) of rice &c. to the accompaniment of the *vyāhṛti*s, the *Gāyatri* and the *mantra* to *Tryambaka*

108. सामविधानब्राह्मणे—राजानमभिशचयेत् तिस्र्येव अवशेषका । संतिष्ठये-  
त्तिलमवैद्यपिमधुसुमनोजातकूपैर्गन्धर्वीम्यो नदीभ्यः समुद्राक्षोदकाग्राहणीदुग्धैर्भद्रा-  
सने रेषामि चर्मण्युत्तरलोम्बासीन जीवन्तीनां मयां शुद्धकोशिरमिविजेदुग्रानुष इति रहयेन ।  
ये कामयेतेकराजः रषादिति नारदः खड्गं प्रविशन्नेतेत्येकदृष्टेणामिविजेत् । अभिशेकश्चे दद्या-  
द्भयानवरं दासीशत्रं सवत्संशुचीनश्च भवेत् । इति । सामविधानब्रा. III. 5. 1-3 quoted by  
राजनीतिय. p. 58 and राजध. की. p. 338; both quote the gloss of Mādhyā-  
cārya on this.

109. The *भारविजय* who became allied to the *वज्रकायक* by marriage are described as भावीरव्यमलजलसुर्पाभिविकानां दृष्टान्भेगाधपुत्रनातानां नारदिकानां E. I. vol. III. p. 258.

(Tai. S. I. 8. 6. 2). The priest first propitiates the goddess Lakṣmī with the hymn<sup>110</sup> to Śrī and then washes the crown with cow's urine and dung, milk, curds, clarified butter and with water mixed with *lukas* to the accompaniment of appropriate mantras, and ties an amulet (*paṇḍura*), and sprinkles the king and his conveyance (horse). At sunrise next day (the day of coronation) the tiger-skin is spread on the throne, the king sits thereon facing the east, the priest takes the golden jars and sprinkles the king with water falling upon him from the cone-like horns of cows with several mantras (such as those addressed to waters, Varuṇa &c.). After the king is made to take a bath, a fee of a thousand *niṣkas* and a hundred *śūśis* is paid to the brahmapas. Then the crown is placed on his head and drums are beaten.

The Kauśikasūtra of the Atharvaveda (in 17.1-10) describes the abhiṣeka (called *luḡhu*) performed on the Yuvarāja, Māṇḍalika, Sāmanta and Senāpati and (in 17.11-34) describes the mahabhiṣeka of the king.

In the Rāmāyaṇa there are numerous references to coronation. In the Yuddhakāṇḍa 131 we have a lengthy description of the coronation of Rāma. Some of the salient features are: Rāma was shaved that day, had a bath and put on costly clothes. Sītā also was suitably dressed and ornamented. Rāma sat in a chariot and went through the capital, when Bharata held the reins, Śatrughna held the umbrella, Lakṣmana the white *chourie*; then Rāma rode an elephant; drums were beaten and conches were blown; as auspicious signs gold, cows, maidens, brahmapas, men with sweetmeats in their hands passed in front of Rāma; the citizens had raised banners on every house; Jāmbavān, Hanumān and two others brought four jars full of sea-water and waters of five hundred rivers were brought

110. The Visṇubharmottara (II. 123. 2-5) states that the hymn to Śrī is different for each veda; the hymn of 15 verses beginning with 'Hiranyavarṇam hariṇam' occurring in the pariṣṭa to the R̥gveda is the one for R̥gveda, the hymn of four verses beginning with 'rathe akṣesu vṛṣabhaya vāje' (Tai. Br. II. 7. 7) is the Śrīsūkta for the Yajurveda; the verse 'śrīyanta iva' (267, 1319) for Sāmaveda and 'śrīyam dhātur mayi dehi' is the one for Atharvaveda. The Agnipurāṇa (237. 2-17) contains a hymn to Śrī, which is not vedic but paurāṇic. Similarly the Rājadharmakaustubha (pp. 367-370) contains a long paurāṇic hymn (said to have been repeated by Indra) to Śrī which is to be recited while the king was to be seated on the throne after coronation. It is taken from the Viṣṇupurāṇa I. 9.



in jars; the aged Vasistha, the family priest, seated Rāma and Sītā on a jewelled throne; Vasistha and other sages sprinkled Rāma with the holy and scented waters, then maidens, the ministers, soldiers, the guilds of merchants also sprinkled Rāma; Vasistha placed an ancient crown on Rāma's head; there was dancing and singing; Rāma gave presents to the priests and to his friends and to such helpers as Sugriva, Āṅgada, Bibhīṣaṇa and others and Sītā gave a necklace to Hammān. In the Ayodhyakāṇḍa 15 we have a description of preparations for the abhiṣeka of Rāma as yuvarāja. The Raghuvamśa XVII. 10 mentions the coronation of Kuśa's son with waters of holy rivers (tirthas) from golden jars.

In the Mahābhārata also there are several references to and descriptions of coronation. Vide Sabhā 33 (where people of all castes including śūdras were invited at the Rājasthya, vv 41-42) for the coronation of Yudhiṣṭhira; Śānti 40 (in verses 9-13 the materials for coronation are described); Ādi 44, 85, 101 (only references).

The saṁbhāras (materials required) of coronation are stated in the Pratimānātaka (I 1) ascribed to Bhāsa and in the Pañcatantra III (after verse 75).

In the Agnipurāṣa, chap. 218 deals with coronation and chap. 219 sets out the mantras. The following are the principal items in the ceremony; bath (with water in which sesame and mustard are mixed), seating on bhadrāsana, proclamation of *abhaṃ* (security and non-injury to all), releasing some prisoners from jail, Aindri Śānti, fast by king, recital of mantras, sanctifying the head and other limbs of the king with earth taken from the top of a mountain and from other places, sprinkling *pañcagaṇya*, sprinkling of water from four jars of gold, silver, copper and earth by amātyas of the four varṇas, *abhiṣeka* by a Rgvedin with water mixed with honey, by Chandoga with water mixed with kuśa grass, by Yajurvedin and Atharvavedin brāhmaṇas touching king's head and throat with yellow pigment, singing and beating of musical instruments, holding of chowrie and fan before the king, king's looking into a mirror and clarified butter, worship of Viṣṇu and other gods, sitting on a tiger-skin below which there are four skins viz. of lion, *cheeta*, cat and bull; purohita to give madhuparka, to tie patṭa (a fillet or tiara) round the king's head and to place the crown on his head; presentation of ministers by the *prahāra*;

king to give presents to the priests and other brāhmaṇas; going round fire; doing obeisance to elders; touching a bull; worshipping a cow with calf; riding a horse; honouring an elephant and riding it; procession in the capital; honouring all people and taking leave of them.

There are descriptions of the abhiṣeka of a yuvārāja (as of Bhīma in Śānti 41), of a great commander (as of Bhīma in Udyogaparva 155.36-32), of Droṇa in Droṇaparva 5.39-43, of Skanda in Śalyaparva 45.

The Rājanitiprakāśa (pp. 49-83), the Rājadharmakaustubha (pp. 318-363) and Nīlīmāyūkha pp. 1-4 quote from the Viṣṇudharmottara almost the whole of chapters 21-22 of the 2nd khanda that deal with the rites and mantras of coronation. It appears that the Kaustubha appropriates all the glosses of Mitraniśra. The Viṣṇudharmottara (II. 19) sets out first the Śānti (propitiatory) rite in honour of Indra (called the Paurandari or Aindri Śānti). It is impossible to give the details here, but a few matters may be noticed. The purāṇa (in II. 21) includes all the details from the Vedic texts (such as Svastyayana, Āyusya, Abhaya and Aparājita hymns) and adds other rites also. It mentions the procedure stated above from the Agnipurāṇa and employs Vedic mantras in doing so. In II. 22 the Viṣṇudharmottara gives purāṇa mantras in 182 verses, in which such gods as Brahmā, Nakṣatras (from Kṛttikā to Bharanī), the planets, 14 Manus, 11 Rudras, Viśve-Devas, Gandharvas and Apsarases, dānavas, dākinīs, birds like Garuḍa, nāgas, sages like Veda-Vyāsa, emperors like Prthu, Dilipa, Bharata, vedas and vidyās, rivers &c. are invoked to crown the king.

The Rājadharmakaustubha gives the most elaborate description of coronation. First a śānti rite is performed, then on the next (2nd) day, a sacrifice to Īśana (Rudra); on the 3rd day worship of the planets and other deities like waters, the earth, Nārāyaṇa, Indra &c. and the invocation of nakṣatras; on the 4th day a *yāga* for nakṣatras; on the 5th day at night a sacrifice to the goddess Nīrti (a clay idol seated on an ass with dark vesture); on the sixth day Aindri Śānti (propitiatory rite in honour of Indra); then the rites prescribed in the Viṣṇudharmottara purāṇa.

The Viṣṇudharmottara notes (II. 18. 2-4) that on the death of the reigning king, there is no waiting for an auspicious time.



The successor should be bathed with water in which sesame and mustard are mixed, proclamation should be issued in his name that he has succeeded as king, the purohita and astrologer should show him to the people while he occupies a seat other than that occupied by the late king; the king should honour the people, proclaim peace and security, set free some prisoners and wait for the formal coronation. The *Rājanītiprakāśa* (p. 62) adds that on the death of a king his successor should be crowned one year thereafter and that when a king abdicates his successor may be crowned on any auspicious day without waiting for a year. From the fact that the Kalinga king Khāravela was crowned in his 25th year and the fact that the *Bārhaspatya-sūtra*<sup>111</sup> (I. 89-90) states that up to the 25th year the prince may spend his time in play and education and then in earning wealth, Jayaswal (in 'Hindu Polity' part II. p. 52) concludes that a Hindu coronation could not take place before the 25th year. This is proving too much. The *Bārhaspatya-sūtra* says not a word about the *age of coronation*. Authorities like the *Viṣṇudharmottara* require waiting for a year only after the death of the former king.

The *Viṣṇudharmottara*<sup>112</sup> (II. 7) specifies at great length the qualities of the principal queen (*agra-mahisī*), which are quoted by the *Rājanītikaustubha* pp. 249-250. The chief queen should have the coronation rite performed along with the king or she should be separately crowned after the king. Manu VII. 77 advises the king to marry a lady of noble family, of the same caste, of charming appearance and possessed of good qualities. The *Rājataranginī* (VIII. 82) notes that Jayamati, the queen of the good king Uccala of Kashmir (1101-1111 A.D.), always occupied half his throne.

The *Nīlimayūkha* and *Rājadharmakaustubha* give the most detailed description of the *Aindri Śānti*. For want of space it has to be passed over. The *Rājanītiprakāśa* (pp. 63-66) and *Rājadharmakaustubha* (pp. 340-346) contain in one place a summary of the whole ceremony after *Aindri Śānti* commencing one day previous to the actual day of coronation. One detail of the

111. दध्निशिविषं वायुं क्रीडापिशां स्पृशनात् कुर्वात् । अत उत्तरमर्धावर्जम् ।  
बर्हिस्त्वयस्व I. 89-90.

112. एवं गुणवशोपेता नरेन्द्रेण सहस्रम् । अभिविचया भवेद्भागे राज्यस्थेन क्षुपेण वा ।  
निष्पृथगन्तर II. 7. § on which रा. घ. को., p. 249 remarks राज्ञा सहस्रमहिषी अभि-  
वेक्षया अथवा अभिविकेन राज्ञा दध्नात्स्वयमभिवेक्षया इत्युक्तम् ।

rites is interesting, viz. after the learned brāhmanas and priests sprinkle the king with holy waters from several jars to the accompaniment of mantras and a R̥gvedin brāhmana touches the king's head and throat with powder of *gorocumū* with the mantra 'gandhadvāram' (Tai. A. X. 1.10), principal virtuous ladies, whose sons are alive, of the four varṇas and also of mixed castes reciting auspicious songs (except the śūdra ladies who remain silent) should sprinkle the king with the waters derived from the sea and other holy places.<sup>113</sup> There is a graphic description of the coronation of Shivaji<sup>113a</sup> the founder of the Maratha Empire in 1674 A. D. in the chronicle (*bakhar*) compiled by Krishnaji Anant Sabhānād (ed. by K. N. Sane, pp. 98-104), where it is said that a costly throne was prepared, from 108 places waters were brought in 108 golden jars (95 *tirthas* are actually named), Gāgābhaṭṭa and other brāhmanas officiated and sprinkled waters on the king, large gifts including the sixteen mahādānas were made. Eight ministers stood round the throne (whose names and offices are set out), the head of the ecclesiastical department called Panditrao being to the right and the prime minister (*mukhya pradhāna*) to the left, an umbrella (*chatra*) set with jewels was held over his head, new golden coins were struck and a new era was started called 'Rājyābhiṣeka' era commencing from that year. In a small work called 'Shivārāja-rājyābhiṣeka-kalpataru' (published in the quarterly Journal of the Bhārata-itihāsa-saṁśodhaka Maṇḍala at Poona, vol. X part I pp. 28-40) in 236 verses it is stated that a Yogin named Nīśalapurī, an adept in Tāntrika rites, got a second coronation of Shivaji performed over three months after that performed by Gāgābhaṭṭa, with Tāntrika mantras on Wednesday the 5th of the bright half of Āśvina śaka 1596, one interesting fact stated being that Shivaji went through a form of marriage with valdika mantras with his wives that had already been married to him with paurāṇic mantras.

113. ततो मुखया ब्राह्मणविविधैश्च यज्ञाः पवित्रतया शुक्लस्यै नावौ मूर्धावभिशिक्तौ च यथासम्भवं सप्तदशविमानसिपाद्वैजैर्गिरिभिर्विभेदुः। शुद्धावास्तुष्णीम् । राजनीलियकाञ्च प. 66. Vide also राजधर्मकौस्तुभ p. 346 and नीलिनदूष p. 12 for similar words.

113a. For a detailed and graphic description of the coronation of King Shivaji in 1674 A. D. vide 'Shiva-chatrapati-mahārāja-caritra' by Malhar Kamrao Chitale (ed. in 1882) pp. 120-125 (in Marathi). Shivaji's upanayana was performed on the 5th of the bright half of Jyeshtha; for seven days various rites went on: Vināyakaśānti, Grahāśānti, Aindri and Paurāṇī dārī are said to have been performed and he was actually crowned on the 13th of the bright half of Jyeshtha. In Sambhājī-rāja-caritra by the same author (edited by Rao Bahadur K. N. Sane, 3rd ed. of 1913) at p. 3 there is a description of the coronation of Sambhājī, son of Shivaji.



The symbols of royalty viz. the umbrella, the chowries and the cane stick are brought in to the king by principal ministers. The Viṣṇudharmottara ( II. 12 ) states that the *cāmara* for the king must be made from the tails of *camari* deer and must be all white with a handle of gold or silver and that the one for a councillor or purohita should be yellowish, while the same *parāpa* in II. 13 describes the requisites of a royal umbrella. That the umbrella and *cāmaras* were inseparable emblems of sovereignty is emphasized by Kālidāsa in Raghuvamśa III. 16. Vide the Brhatsamhitā, chap. 71 and 72, for *cāmara* and umbrella.

It appears that sometimes a king took another name on coronation which was called *abhiśekhanāma*. Vide Dr. R. C. Majumdar's 'Champā' p. 157 for a list of such names from Champā and Dr. Minakshi's 'Administrative and social life under Pallavas' p. 39 for the Pallava Rājasimha having the coronation name Nārasiṃhavarman. Certain kings, when they performed *Aśvamedha*, assumed new titles e. g. Kumāragupta I seems to have assumed the title of Mahendra, as is clear from some of his coins on which his name and title occur.

The Brhatsamhitā of Varāhamihira (chap. 48) lays down that the *paṭṭa* (tiara) for the king and others should be made of pure gold, that their length should be double of the breadth in the middle of it, that there should be five aigrettes in the king's tiara, three in the queen's and *yuvārāja's*, one in that of the commander-in-chief and none in the one that the king may give to a person as a mark of favour. Utpala in his com. on the Brhatsamhitā says that *paṭṭa* is the same as *mukuta*, while acc. to the Nītimayūkha (p. 13) and other works *paṭṭa* is tied on the forehead and *mukuta* (crown) is placed on the king's head. Vide Rājantīprakāśa (pp. 54-55) and Rājadharmakauṣṭubha (p. 324) for further details. The Viṣṇudharmottara ( II. 14 ) describes the characteristics of *bhadrāsana* ( the throne ) for the king; vide also Rājantīprakāśa pp. 51-52. It must be made of gold, silver or copper or a tree from which milky juice oozes when cut, it was to be one cubit and half high for a *śāhīrājā*, 1½ cubit for a king and one cubit high for a feudatory (*sāmanta*).

The Viṣṇudharmottara ( II. 162 ) states that on every anniversary of the first coronation when the moon is in the same *nakṣatra* as that on which the first coronation took place the king should repeat the rites of coronation. The Brahmapurāṇa

quoted by the R. D. K. (p. 10) also says the same.<sup>115b</sup> Vide *Rājantiprakāśa* p. 115 and *Kaustubha* p. 379 also.

Manu (VII 217-220) warns the king against poisoning. 'The king should partake of food that is well examined and prepared by servants that are trust-worthy (lit. as if they were his own self), that know the proper times (for dining), that cannot be won over and over the food spells destroying poison should have been muttered. He should mix up in all that he partakes medicines that are antidotes against poison and should always wear gems that work against poison. Only women devoted to him and well examined and found safe as regards their dress and ornaments should be allowed to touch him when fanning or bathing him or applying perfumes to his body. The king should take care in this way as regards his vehicles, bed, food, bath, applying perfumes and all ornamentation'. *Kām.* VII 8 and *Matsya* 219.10 are very similar to Manu VII 220. *Kauṭilya* (I. 17) states that the king should first secure his personal safety against his sons and wives and then the security of the kingdom against near and distant enemies. He first deals with safety from his own sons, the princes. The opinions of various authors on polity are cited (some of which have been noted above) viz. secret punishment (acc. to *Bhāradvāja*), keeping under guard in one place (acc. to *Viśālākṣa*), keeping the prince in a fort under the boundary guard (acc. to the *Pārāśaras*), keeping the prince away from his own kingdom in a fort belonging to a feudatory (acc. to *Piśuṇa*), sending him to his maternal relations (acc. to *Kaunapadanta*), making the prince addicted to sensual pleasures (acc. to *Vāṭavyādhi*), proper pre-natal care and proper education after birth about dharma and restraint (acc. to *Kauṭ.*). This symposium shows how the problem of the king's safety against bad princes taxed the ingenuity of all ancient writers on *Arthasāstra* and how *Kauṭilya* advocated the only reasonable course possible. The *Matsyapurāṇa*, chap. 220, also relies on training, discipline and gradual transfer of responsibility and advises the imprisonment of a bad prince in a well-guarded place furnished with comforts suitable to his

<sup>115b</sup>. अनेनैव विधानेन कुर्वद्वाप्यनं सदा । अविनेकादि दत्तेन प्रतिमन्त्रमरे तुषः ॥  
*अष्टादश* quoted in *राजधर्मकाण्ड* p. 10.



position<sup>114</sup>. In L 20 Kautilya gives practical hints against the danger of fire and poisons: e.g. he says that poisonous snakes will not enter a building provided with *Jivanti*, *Sveta* and other plants; that cats, peacocks, mongoose and spotted deer when let loose eat serpents, that certain birds like parrots, *manas*, malbar bird shriek when they suspect snake poison, the heron loses his consciousness in the vicinity of poison; the pheasant (*jivanti-jivaka*) feels exhausted; the young cuckoo dies; the eyes of *culora* become redder<sup>115</sup>. Kām. (VII 10-13) repeats the words of Kaut. L 20 and the Matsya (219, 17-22) refers to the effects of poison on the same birds and a few others. The Matsyaparaśau in chap. 219-220 closely follows Kaut. and Kām. and appears to be based on them (e.g. Matsya 219, 30 latter half is the same as Kām. VII. 24 first half). Vide Yasañtilaka III. pp. 511-512 for the effects of poison on birds; almost in the same words as those of Kaut. and Kām. Vide Śukra I. 326-328, Kaut. I 21, Kām. VII 15-26, Matsya 219, 9-32. state that part of the food for the king should first be cast into fire and offered to birds and the effects noted, they dwell at great length on the different tints of the flames of fire and of the smoke when different kinds of food are cast into fire, they point out the actions and gestures of the poisoner, they prescribe that the cook and the doctor giving medicines for mixing in food as antidotes should be made to partake of the food and then the king should himself partake of it. The king has to be careful in the harem, when receiving presents or anything sent by others, when sitting in a conveyance or riding a horse or travelling in a boat or when attending festivals (Kaut. I. 20-21, Kām. VII 28-47). Kaut. L 20 and Kām. (VII. 44 and 50) advise the king not to trust women and even the queen and to approach even the queen after she has been examined by men 80 years old and women over 50

114. सुनाधानमशक्यं तु परम कर्तुं स्वभावात् : न चान्ये तस्य कार्यं युमदेजे सुखा-  
न्यवम् । अविनीतकुमारं हि कुलमाशु निशेषेते । अधिकारेषु सर्वेषु विनीतं विनियोजयेत् ।  
आसीत् स्वल्पे ततः पञ्चाशद्वेलाय महारवि । मत्स्य 220, 5-7. Compare कामन्दक VII. 2-6  
राजद्वारा मदोद्भूता मया द्रव निरुद्धाः । अतः वापिनिश्रान्तिं विरं वापिनिश्रान्तिः । ...  
विनयोपसृज्य भृत्यैः कुर्वीत ह्यतिः सुताम् । अविनीतकुमारं हि कुलमाशु विनश्यति ॥  
विनीतमौरसं ह्यनं यौवराज्येभिषेचयेत् । कुर्वं राजमिन्द्रहृतं कुर्वीत सुखमन्यवम् । Vide also  
अग्निपुराण 225, 3-4 for similar provisions.

115. विनश्येते in कामन्दक VII. 12 is explained by the com. as  
शमरहिते भवतः.

years in the harem and found<sup>116</sup> safe. Kaut. (I. 20) and Kām. (VII. 51-54) both name seven kings that met death in their queen's chambers by the stratagems of the queens themselves or those that were incited by them: viz. Bhadrasena killed by his brother concealed in the chamber of his queen (who was in love with the king's brother), the king of Karuṣa killed by his own son who had concealed himself under the bed of the queen (who was angered by the king's promise to give the kingdom to the son of a rival queen), the king of Kāśi killed by his queen who mixed fried rice with poison pretending that it was honey; the queen of the king of Sauvira killed him with a jewel in her girdle that was smeared with poison; Vairantya was killed by his queen with her anklet smeared with poison; Jarūṣa (in Kām.) was killed with a mirror (with a razor-like edge) covered with poison; Vidūratha was killed by his queen who had concealed a weapon in her braided hair. The Harsacarita (VI) of Bāṇa mentions with additional details the cases of Bhadrasena king of Kalinga killed by his brother Virasena, the king of Karuṣa (Dadhra by name), Kāśirāja (named Mahāsena) whose queen Suprabhā killed him to secure the kingdom to her son, Jarūṣa king of Ayodhyā, Vairantiya named Rantideva, Vidūratha of the Vṛṣṇis killed by Bindumati, the Sauvira king Virasena killed by queen Hamsavati. In the Bḥataśmihita (77. 1-2) two of these, Vidūratha and Kāśirāja, are mentioned, but the latter is said to have been killed by his estranged queen with an anklet smeared with poison. Medhātithi on Manu VII. 153 quotes four of these seven. The Nīlīvakyaṃṛta (rājaraṁśaśamuddheśa 35-36, pp. 231-232) sets out six other examples of kings killed by their queens. The king has also to beware of treachery from ministers and officials. Kaut. (in I. 10) describes how ancient writers devised methods of ascertaining the purity or impurity of ministers by putting before them allurement regarding dharma, wealth, sexual desires and playing on their fears and gives it as his own opinion that temptations that have direct reference to the king or queen should not be placed in the way of the ministers. In the Harsacarita VI, Skanda-

116. अन्तर्दृष्टवः स्वविराजोपास्त्रिहो देवीं पश्येत् । ... आशीतिकाः दुर्धराः पञ्चाशत्काः स्त्रियो वा मातुर्गुणैश्च जनाः स्वविरचर्षराग्नायास्त्रिकाश्वरोधानां शौचाशौचं विदुः । कौटिल्य I. 20; आशीतिकाश्च दुर्धराः पञ्चाशत्काश्च पश्यितः । दुर्धरेस्वरोधानां शौचमापत्तिकाश्च वे ॥ न हि देवोदृष्टं घञ्जिह्वाजीवमलिपेक्षनम् । अरचयन्तु शीघ्रं दिव्यानि स्त्रीषु ॥ इत्येत ॥ काम. VII. 44 and 50. Dr. Sham Sastri's translation (p. 46) of Kaṇḍiyya 'eighty men and fifty women' is not correct.



gupta, the commander of the elephant arm of Harṣa's army, warns the Emperor against putting trust in everybody and gives 19 instances of kings that met misfortunes, death or destruction through their own carelessness and the stratagema of those about them (apart from the seven mentioned above and two more who fell victims to the wiles of their queens). Some of them are famous and deserve mention here, viz. the king of Vatsa (i. e. Udayana) who was imprisoned by the soldiers of Mahāsena that jumped out of a faked elephant; Maurya Brihadratha killed by his Senāpati Puṣyamitra (called 'anārya' by Bāṇa on account of his treachery to his master); Kākavarṇa Śāśunāri (Śāśunāgi?), Sumitra, son of Agnimitra, whose head was cut off by Mitradeva while the king fond of dancing was in the midst of actors; the Śuṅga Devabhāti killed by his minister Vasudeva; Candragupta (of the Gupta dynasty) who dressed as a charming woman cut off the king of Śakas; the foolish Maukharī king Kṣatrarman killed by bards. Vide Kāmasūtra V. 5.30 for two other examples of the Ābhira king Koṭṭarāja and Jayatsena king of Kāśī. The Nītivākyāmṛta (Dūtasamuddesa) p. 171 states that Cāṇakya killed one of the Nandas through a *dūta* and that two other kings met death from presents of poisoned clothes and a jewelled box containing snake poison. The Yaśustilakacampū (III. pp. 431-432) sets out many instances of kings that met with death from the wrath or the machinations of their ministers, purohita &c.

From these examples one should not draw the facile and sweeping conclusion that in India the life of no king was safe. In the vast continent of India there were always numerous kingdoms at the same time. It is no wonder that in the course of several thousand years and over such vast territories, some kings met death by treachery and stratagem. This is not a phenomenon restricted to India. In a small country like England we have within two hundred years instances of the murder of the boy king Edward V and his brother prince Richard, of Lady Jane Grey nominated by Edward VI as his successor and the further fact that Cromwell during the last few months of his life was afraid of being assassinated. During about 150 years from 1789 out of 30 Presidents of the U. S. A. several such as Lincoln, Garfield and McKinley met death at the hands of assassins.

The truth is that in a monarchy the king was the pivot of the whole State. As the Matsyapurāṇa (219.34) finely puts it

'the king was the root and the subjects were the tree; in saving the king from dangers the whole kingdom was on the road to prosperity and therefore all were to make efforts to guard the king'.

Hereditary monarchy was the norm of government in ancient and medieval India. Kautilya expressly states (I. 17 at end) that the practice to make the eldest son the king is honoured except in the case of a colamity. At or about the time of Buddha and a few centuries thereafter there were a few oligarchies or (as some scholars prefer to call them) republics. But our Dharmaśāstra or Arthaśāstra authorities contain rather very meagre references to them. The Mahābhārata in Śānti 107 furnishes the following data about *gana*rājyas (government by groups): Internal dissensions are the root of the ruin of *ganas*; it is very difficult to keep lines of policy secret when there are many (when the government is that of many, i. e. an oligarchy or a republic); all members of the *gana* in their entirety do not deserve to hear the line of policy decided upon, but the chief persons among the *ganas* should meet together and arrange among themselves to secure the welfare of the whole *gana*; if disputes that arise among the families (or clans) are connived at by the heads of the clan, the ruin of the clan takes place which leads on to dissensions among the whole group (*gana*). Danger from internal dissensions must be guarded against (in the case of *gana*rājya), external dangers are not serious (in the case of *gana*rājya). All members of the *gana* are equal by birth and family, but they are not equal in energy, intelligence, bodily appearance and wealth. By their enemies *ganas* are broken by means of internal dissensions and bribes; therefore the greatest safety of *ganas* lies in union<sup>117</sup>. In these words the author of the Mahābhārata unerringly puts his finger on the weak spots of the rule of many viz. secrecy cannot be kept, there is corruption due to greed and jealousy, which bring about their downfall. In another place (Śānti 81) the Mahābhārata

117. भेदमूलो विनाशो हि गणानामुपलब्धये । मन्त्रसंवरणं दुःखं बहुनामिति मे मतिः ॥ १ ... न गणाः कुलनशो मन्त्रं चोत्तमवृत्तिं भारत । गणहृदयेस्तु संसृज्य कार्ष्णि गणक्षिते मित्रः । 25 ... कुलेषु कलहा ज्ञानाः कुलद्वैतवेक्षिताः । गोपस्व नाशं कुर्वन्ति कणभेदस्य कारकम् । आत्मनश्चरमपि स्वयमसारं बाह्यतो मयम् ॥ ... ज्ञापय च संज्ञाः सर्वे कुलेन सद्यस्तत्तथा । न चोद्यतेन वृद्ध्या वा रूपद्वेषेण वा हन्यः । भेदाच्चैव प्रधानाश्च निघ्नन्ते विदुर्भेदभाः । तस्मात्संघातेनाहर्षणानां शरणं महत् ॥ ज्ञानि 107. 27-32. भेदाद्विनाशः सङ्घातानां सङ्घप्रमुखोक्तिः केदारः । यथा तान् वाप्य मोक्षविद्वन् सङ्घस्तथा कुच ॥ वाप्यत्र बुद्धिमान्निगदां नामद्वेष्टिपानिग्रहात् ॥ वाप्यत्र यमसंस्वापाद्भुजः प्राज्ञेऽवलम्बते ॥ ज्ञानि 81. 23-26.



refers to the *saṅgha* of the *Vṛsnis*, of whom Kṛṣṇa was the president, and the great truth that the ruin of *saṅghas* is brought about by internal dissensions and corruption and it hits off the qualities required in the wise leader of the *saṅgha* to be four viz. sagacity, forbearance, self-control and giving up the acquisitive spirit. The words *saṅgha* and *gana* are employed as synonyms in the Mahābhārata. Pāṇini (III 3.86) states that *saṅgha* means *gana*. Patañjali in his Mahābhāṣya (vol. II. p. 356) states that *saṅgha*, *śamūha* and *śamulāya* mean the same thing. Pāṇini knows two kinds of *saṅghas* viz. *āyudhaḥjīva* (who practised the profession of arms) and those that were not so and further he also indicates that in the Vālika country *saṅghas* included<sup>118</sup> brāhmanas, kṣatriyas and others (vide V. 3. 114). He names the *saṅgha* of Vṛkas, Trigartas, Yaudheyas, Pārśvas (V. 3.115-117) as *āyudhaḥjīva*. Kātyāyana by his *vārtika* 'kṣatriyādekarājāt saṅghapratishedhārtham' on Pāṇini IV. 1.168 shows that *saṅgha* was differentiated from monarchy. Acc. to Kautilya (p. 53 above) the *saṅgha* of the *Vṛsnis* perished when it came in conflict with Dvāparyana. In another place Kautilya says that (in some cases) the kingdom may be ruled by a clan, for the confederacy<sup>119</sup> of a clan is invincible, it is free from the calamity of a kingless State and therefore exists on the earth very long. Kautilya devotes one section (Adhikarana XI) to the dealings of the ambitious king with *saṅghas*. There he states that securing the *saṅgha* on one's side is far better than securing an army or allies and makes the most interesting remark<sup>120</sup> that the corporation of the kṣatriyas and others in

118. In the Karmaparva the country of Vālika is severely condemned and it is said to be the country between the Indus and the five rivers of the Panjab (chap. 44. 7) पञ्चानां सिन्धुवह्निना नदीनां देवप्रभिनः । तत्र धर्मपाषाण-क्षुण्णपादोक्तानि वर्जयेत् ॥ In chap. 44, 45 it is stated that their chief city is Śākala and in verses 11-30 and 33-35 their condemned practices are set out, and verses 31-34 say that the country of the five rivers is called Āraṇja and Vālika. In Karmaparva 45. 6-13 the interesting fact is mentioned that in that country only one brother in a family acts as a brāhmaṇa should and that their sons do not inherit but their sister's sons take the inheritance. Vide 'Indian Culture' vol. VI, 129-135 and vol. VIII. p. 83 ff for information on 'Vālika'.

119. अन्यत्रापि देवैर्न ज्येष्ठमाणी तु दृश्यन्ते । कुलस्य वा सर्वेदास्यं कुलसङ्घो हि दुर्जनः । अराजपक्षमाया जन्मदायसि सिनिय ॥ कौटिल्य I. 17.

120. सङ्घपक्षानो सङ्घनिष्ठायां मानसुचनः । ... काम्योजसुराद्विषयेऽप्यदाहो नारायणोपजीविता । लिङ्गितिकद्विकमहकमद्वककुल-कुलपाजालाद्वो राजसङ्घोपजीविनः । कौटिल्य XI. 1 । विशेषतश्च सङ्घपक्षानां सङ्घपक्षिणो राजकुलानां सङ्घनिष्ठो भवः, तन्निष्ठो विनाश इति । कौटिल्य VIII. 3.

Hypheis or Beas. The Greek writers describing the invasion of Alexander speak of the democracies of the Oxydrakai (Ksudrakas), Mallol (the Málavas), the Sibei (Sibis), Sambastai (the Ambasthus) and several others. Vide K. P. Jayswal's 'Hindu Polity' part 1 chap. VIII (pp. 63-79) for Hindu Republics mentioned in Greek writings. Rhys Davids in 'Buddhist India' pp. 19 ff. summarizes the data about Indian republics derived from Buddhist works. On p. 22 he gives the names of eleven republican clans with their capitals, some of which like the Śākya (of Kapilavastu), the Mallas (of Kusināra and Pavā), the Videhas (of Mithilā) and Licchavis (of Vesālī) are well-known. Rhys Davids states (p. 19) that the administrative and judicial business of the Śākya was carried on in a moot-hall (santhāgāra) at Kapilavastu, that a single chief was chosen (but how and for what period is not known) who presided over the sessions and (when no sessions were being held) also over the State, that he bore the title of *rājā*. He mentions that at one time Buddha's cousin Bhaddiya was *rājā* and that in another passage Buddha's father Śuddhodana is styled *rājā*. He further points out (p. 25) that the Vajjians had eight confederate clans of which the Licchavis and the Videhas were the most important. K. P. Jayswal in 'Hindu Polity' part 1 pp. 135-165 brings together all the data about Hindu oligarchies (or republics as he calls them) and his work deserves the serious attention of all those who are interested in the study of ancient Indian political institutions, though here and there one cannot approve of his interpretations and theories. To take only one example, he holds that the procedure prescribed by Buddha for the deliberations of the *saṅgha* in the Mahāparinibbāna-sutta was borrowed from the procedure followed by the republics in their deliberations and therefore he describes the procedure of the Buddhist *saṅgha* in great detail ('Hindu Polity,' part 1 chap. XI pp. 103-117). Dr. D. R. Bhandarkar also (in 'Some Aspects of Ancient Hindu Polity' pp. 121-125) adopts this theory. This to say the least is a gratuitous assumption. The mere fact that Buddha told the prime minister of Ajātaśatru, king of Magadha, who contemplated attacking the Vajjian confederacy, that the latter would not decline but prosper as long as they observed seven conditions and the fact that those very seven conditions were prescribed by the Buddha for the welfare of the *saṅgha* do not lead on to the further inference that the procedure followed by the monks in the deliberations of the meeting of the *saṅgha* (which is set out in such passages as the Mahāvagga IX. 3, S.B.E.



vol. XVII p. 264 ff, Cullavagga IV. 9, S. B. E. vol. XX pp. 24-27) was the procedure of the meetings of the oligarchies. The seven conditions (both for the welfare of the Vajjians and the Saṅgha) are set out in the Mahāparinibbāna-sutta, chap. I (S. B. E. vol. XI pp. 3-8) viz. holding full and frequent public assemblies, meeting together in concord and carrying out undertakings in concord, enacting nothing not already established and abrogating nothing that has been already enacted and acting in accordance with ancient institutions established in former days, honouring and revering and supporting elders and hearkening to their words, not detaining women or girls of their clans by force or abduction, honouring and supporting Vajjian shrines in town or country and not allowing proper offerings and rites to fall into desuetude, protecting and supporting the Arahats among them. On the most important points in connection with a republic or oligarchy we have no information at all, viz. who were entitled to vote, what were the qualifications for membership of the assembly that governed the State, how voting took place, what was the period for which members of the assembly were elected, whether the president was elected for life or a shorter period or was elected at all, what were the powers and procedure of the assembly. Vide Dr. Beni Prasad in 'Hindu Political Theories' p. 158 for criticisms. Rhys Davids (in 'Buddhist India' p. 41) says that according to the Jātakas there were at Vesālī (modern Basadh in the Muzaffarpur District), the capital of the Licchavis, 7707 *rājās* (or chiefs). In the Bhaddasāla-jātaka (Fausbøll, vol. IV p. 148) there is a reference to a tank reserved for the bath of the families of the ruling chiefs (*rājās*) of the *gaṇa* in the city of Vesālī. In the Mahāvastu (ed. by Senart vol. I. p. 271) it is stated that there were twice eighty-four thousand nobles (*rājās*) among the Licchavis. This explains what Kauṭilya means by '*rājasabdopajivinaḥ*'. These people called '*rājās*' were probably the scions of the several branches of the Licchavis, who had in their hands the government and who were not doing manual (or agricultural) work. Vide Government Epigraphic Report for 1899 p. 23 and Indian Historical Quarterly vol. IV p. 652, where it is said that in an inscription from Uttaramallur the extent of land and of Vedic learning required in a candidate for election are specified as also the method of writing on tickets the names of candidates. But such records, even in South India, are very few and refer to village *sabhās* and there is nothing in the works on dharmasastra or arthasastra about the methods of

the countries of Kāmbhoja and Surāstra practise *cāritā* (husbandry and trade) and the profession of arms, while those of the Licchivikas, Vṛjikas, Mallakas, Madrakas, Kukuras, Kurus and Pāṇcālas live on the title of *rājan* applied to them (i.e. they are not cultivators of the soil and soldiers, but are only chiefs or nobles). What Kautīlya means by '*vārtā-śāstropajivīnāḥ*' appears to be that they were agriculturists ordinarily but were ready with their swords to defend their country when occasion required. Kautīlya then describes in detail without any scruples how the conqueror may by various subtrefuges cause dissensions among the members of the *saṅgha* and its leader or leaders (*saṅgha-mukhya*). In VIII. 3 Kautīlya remarks that dissension becomes particularly rife owing to gambling among *saṅghas* and noble clans that have the *saṅgha* constitution and they are destroyed. From about the 5th or 6th century A. D. the oligarchic States or Republics became rare and gradually disappeared. We get further data about these *ganarājyas* from Buddhist works, Greek sources (like the fragments of Megasthenes), coins and inscriptions. Rudradāman (in Junāgaḍh Inscription of 150 A. D.) boasts that he had uprooted the Yaudheyas who had become puffed up and unbending on account of the title of heroes (*vīra*) that was prominently applied to them among all *ksatriyas*<sup>121</sup> (E. I. vol. VIII. at p. 44). Samudraguṇa (in the first half of the 4th century A. D.) subjugated the Yaudheyas, Mālavas, Ārjunāyanas &c. In Gupta Inscriptions No. 58 p. 251 there is mention of a *mahārāja-mahāśenāpati* who was made their leader by the Yaudheya-gaṇa. The *Bṛhatsaṃhitā* in several places refers to the Yaudheyas and Ārjunāyanas (e. g. 4.25; 5.40, 67, 75; 14.25 and 28; 16.21; 17.19) and speaks of Yaudheya-nṛpa in 9.11. Vide Rapson's 'Indian coins' pp. 11 and 15 and Plate II, nos. 13-15 and Plate III, no. 20 for the coins of the Yaudheyas and Ārjunāyanas. Arrian writes in 'Indika' (tr. by MacCrindle IX. p. 308, ed. of 1926) 'from Dionysius to Sandrakottos the Indians counted 153 kings and a period of 6042 years, but among them a republic was thrice established'. MacCrindle's 'Invasion of India' (p. 121) speaks of an aristocratic government on the

121. सर्वज्ञाविष्णुवशीरस्यद्वजलोभेकादिधेयानां वीरैवानां यमशोकाद्वेदेन। E. I. VIII. at p. 44; वीरिप्रगल्भपुरस्कुतस्य महाराजमहासेनपतेः &c. in Gupta Inscriptions pp. 251-252. Vide Quarterly Journal of the Mythic Society of India (Silver Jubilee number) p. 114 for Yaudheyas, and J. B. O. R. S. vol. 23 p. 146.



election to political assemblies and the qualifications of candidates. Vide Dr. D. R. Bhandarkar's 'Some aspects of Ancient Hindu Polity' (1929) pp. 101-121 for a concise statement of several types of republics in Ancient India.

Another important question is whether in monarchical states there were popular assemblies of elected representatives or, in modern language, Parliaments. The words 'sabhā' and 'samiti' require consideration in this connection. In Rg. I. 91.20 Soma is said to confer a son who is *sūlanya*, *vidathya* and *sabheya*, from which it follows that *sabhā* is in some respects different from 'vidatha'. In Rg. II. 24.13 a *vipra* (a priest or composer of hymns) is said to be *sabheya* 'clever or eminent in a sabhā'. In Rg. X. 34.6 'sabhā'<sup>122</sup> appears to mean a gambling hall. In Vāj. S. XXX. 6 *sabhānta* seems to mean only 'sabhānt', a member of a judicial tribunal, while in XXX. 18 the *sabhāsthāna* is given up to Ākanda in the symbolic Puruṣamedha. In the Vāj. S. XVI. 24 there is an obeisance to *sabhā* and *sabhāpati* (presidents of sabhās). In Atharvaveda VII. 12.1 'sabhā' and 'samiti' are said to be the two daughters of Prajāpati, from which it may be argued that they were very similar but somewhat different. In Atharvaveda XV. 9.2 also *sabhā* and *samiti* are separately mentioned. In Tai. Br. III. 7.4 the word *sabhāpāla* occurs and *sabhā* is explained as 'gambling-hall' by Sayana. In Rg. X. 97. 6 and Vāj. S. XII. 80 it is said 'that *vipra* is said to be a doctor (bhīṣak) in whom medicinal herbs come together as nobles (rājānaḥ) in a *samiti* (meeting or battle)'. In Rg. X. 191. 3 the word 'samiti' seems to mean no more than a meeting or meeting place. In Atharvaveda V. 19.15<sup>123</sup> we have 'the assembly (samiti) does not suit him (or is not won over by him) who harasses a brāhmaṇa'. In the Chāndogya Up. (V. 3. 1) Śvetaketu is said to have repaired to the assembly (*samiti*) of the Pañcāla country, where the king Pravāhana Jaivali asked him five questions which the former could not answer and then he approached the next morning the king who was in his *sabhā*. Here it seems that both words are applied to the same assembly. It is impossible to say how the *sabhā* or *samiti* was constituted in the Vedic period. All that we can say is that it was an assembly of people to which the king, learned men and others went. It is extremely doubtful whether it was an elective body. Probably it was an *ad hoc* assembly of such people as cared to

122. सभमेति क्रियः प्रवृत्तमानो जेष्ठासीति तस्या सुश्रुतारः । क. X. 34. 6.

123. न वर्यं नैवावर्यं बहुजनमभिषर्ति । वासने समितिः कल्पते न मित्रं न कले वक्षन् । अथर्व V. 19. 15.

be present. K. P. Jayaswal (in 'Hindu Polity' part I p. 11) holds that 'samiti' in the vedic age was the national assembly of the whole people, that it was the king's duty to attend it (*ibid.* p. 12) and that 'sabha' was the standing and stationary body of selected men working under the authority of the samiti (*ibid.* p. 18). This is all conjectural, as Jayaswal himself admits 'the *sabha* was certainly related to the *samiti*, but its exact relationship is not deducible from the data available' (*ibid.* p. 18).

These frantic efforts by such scholars as Jayaswal to prove that India had elective assemblies are made to counteract the sinister propaganda of many English writers that East is East and West is West and that the democratic institutions of the West cannot be transplanted with success on the soil of India. This is mischievous propaganda. There were no democracies even in Europe a few hundred years ago; even in England, France and a few other countries democracies have been introduced and have thrived within a short time. There is no reason why they should not do so in India, if honest efforts are made and difficulties are not purposely created by vested interests. Korkunov in 'General theory of law' (tr. by Hastings, 1922, New York p. 296) says 'According to the historical school the political organization of England is good for England alone, for it corresponds to a natural genius very peculiar.... This doctrine of the historical school is false, since we have already seen that a change produced in the social ideal may bring about a change in the whole social development. The influence of one people on the life of another is a proof of this. The ideal is a force supporting the social life and this ideal may be the result not merely of our own special experience, but also of the experience of neighbouring peoples'.

Two other words require consideration, viz. *Paura* and *Jānapada*. The word 'paura' occurs in Rg. V. 74. 4 where it has three applications, viz. to the *Asvins*, to the sage Paura (who was an *Ātreya*) and to the cloud (acc. to *Sāyana*). K. P. Jayaswal (in 'Hindu Polity', part II pp. 60-108) devotes considerable space to 'Paura' and 'Jānapada' and one may at once admit that he displays great learning, industry and ingenuity in his discourse on this subject. He holds that the Paura and the Jānapada were elective parliamentary bodies or what may be called the Hindu Diet and he sums up (on p. 108) their functions as follows: 'we had an organism or a twin



organism, the Paura-Jānapada, which could depose the king, who nominated the successor to the throne..., whose President was apprized by the king of the policy of state decided upon in the council of ministers, who were approached and begged by the king in all humility for a new tax, whose confidence in a minister was regarded as an essential qualification for his appointment as Chancellor, who demanded and got industrial, commercial and financial privileges for the country, who could enact statutes even hostile to the king, in fine who could make possible or impossible the administration of the king.' This is a very glowing picture of parliamentary institutions in ancient India. But unfortunately it cannot be accepted as the truth. Many scholars such as Prof. B. K. Sarkar (in 'Political Institutions and theories of the Hindus' p. 71) and Dr. Beni Prasad (in 'The State in ancient India' pp. 498-500) do not subscribe to this theory. For want of space detailed examination of Jayaswal's theory cannot be entered upon. But a few remarks must be made. The sheet anchor of his theory (in 'Hindu Polity' part II, p. 68) is a passage in the Hathigumpha Inscription of Kharvela (E. I. vol. XX at p. 79 ll. 6-7) which runs 'Rājasūyam saindasayamto sava-kara-vapam anugaha-anekāni sataśahastil visajati poram jānapadam' and which he himself translates (at p. 78) as 'remita all tithes and ceases, bestows many privileges amounting to hundreds of thousands on the paura and jānapada'. Jayaswal himself has changed his views about the interpretation of this difficult record so many times (e. g. J. B. O. R. S. vol. III pp. 425-507 may be compared with his interpretations in E. I. vol. XX p. 71) that one can never feel sure even of his latest readings and translations. As a matter of fact Dr. Barua differs and reads 'pora-janapadam' as one word (I. H. Q. vol. 14 p. 464) and does not accept Jayaswal's interpretation (p. 477). If the word is 'pora-janapadam' it would simply be a *śamāhāra-śanda* compound and mean 'all inhabitants of the capital and the rural inhabitants' and the singular need not necessarily lead to the inference that a parliament of city-dwellers and rural population is meant. Even supposing that the correct reading is 'poram-janapadam', that would not matter much. We shall have to understand the word 'janam' after it, since the word 'jana' is often employed after 'paurajānapada' e. g. in the 8th Rock Edict at Girnar 'janapadasa ca janasa dasanam' C. I. I. vol. I. pp. 14-15, in Rudradaman's inscription in E. I. vol. VIII p. 44 'apadayitva paura-janapadam janam' and 'paurajānapada-janaupagrahānam'.

at p. 45 or in the Rāmāyaṇa II. 2. 51, II. 111. 19 'paurajānapadam janam'). Lastly if the paurajānapada organization had (as said by Jayaswal in the quotation cited above) the power to depose kings and pass even hostile statutes, is it not a contradiction in terms to say that, instead of the Parliament or Diet deciding to remit certain taxes, it was the king who remitted taxes and bestowed favours (or privileges) of lakhs of rupees on the supposedly all powerful Paura-Jānapada assembly? In all passages that he quotes from the Rāmāyaṇa and other classical sanskrit works the ordinary meaning of *paura* (residents of the capital) and *jānapada* (inhabitants of the country other than the capital) is quite enough and it is impossible to hold that any elective body is meant. In most passages the plural 'paurajānapadān' is used. If 'Paura-jānapada' stands for one elective body or two bodies, no explanation is offered why the plural should generally be used and not the dual. Kautilya (I. 19) states that the king should in the 2nd part of the day (divided into eight parts) look into the causes of the paurajānapadas. Jayaswal (in 'Hindu Polity', part II p. 95) misinterprets this passage by saying that the king had to set apart one period daily for the business of the paurajānapada assembly. Here again the plural is used and the dictum of Kautilya is the same as that of Yāj. I. 327 who says that the king should look into the law-suits (vyavahāra) of the people. The word 'kārya' is employed by Manu VIII. 43, Nārada and other writers on vyavahāra in the sense of 'law-suit'. Yāj. II. 36 says that the king should restore to the jānapada property stolen by thieves. Jayaswal (in 'Hindu Polity', part II p. 93) presses the singular 'jānapadasya' into his service and holds that it was the popular assembly that demanded the restoration of the things stolen. This, to say the least, is twisting the plain words of Yāj. The Mit. paraphrases the word to mean 'to the person dwelling in his country from whom the property was stolen'. The corresponding passage of Manu VIII. 40 (dātavyam sarva-varṇaḥyho rājāś cernir-bṛtaṁ dhanaṁ) is quite clear, since it fortunately does not use the word jānapada and Medhātithi explains it as 'it should be restored to those from whom it was stolen'. Jayaswal (in 'Hindu Polity' part II p. 79) holds that a passage in the Arthśāstra (II. 14) refers to the fact that the Paura-Jānapada assembly got gold coins minted by the royal mint-master.<sup>124</sup>

124. सौमित्रः पौरजानपदानां स्वयमुत्कर्षनावेशमितिः कारयेद् । निर्दिष्टकालवारं च कर्म कुरुः । अर्थशास्त्र II. 14.



But the plain meaning is that the mint-master was to mint standard silver and gold coins for all people when they brought bullion to him to have coins struck. One striking circumstance to be considered is that, though in all works on polity a *śūrya* is said to have seven elements, none of them includes a political elective assembly (like the *paura-jānapada* postulated by Jayaswal) among them. They only enumerate the country and the capital and declare even these as of lesser importance than the king and the ministers. Another matter that makes the existence of powerful elective political assemblies in monarchies most unlikely is the total absence of any reference in works on polity to the method of election, the system of voting, the qualifications of members, the period for which the assembly was elected and allied matters. When medieval writers like Aparārka on *Yāj.* II. 1 (p. 600) quote from *Bṛhaspati* verses about four kinds of *sabhā*, they refer only to judicial tribunals of various sorts and grades (the same verses are quoted as *Hārta's* in *Rajantī-ratnākara* p. 20). Vide n. 368 below.

If elective popular assemblies did not exist, then it may be asked whether the king was an absolute monarch or a despot or whether there were any checks that mitigated or regulated the power and doings of monarchs. The answer is that there were such checks and limitations. These were of various kinds. Exhortations addressed to the king himself exercised a restraining influence. For example, *Kāt.* (10) says 'the king who gives way to wrath without proper thought would reside in a horrible hell for half a *Kalpa*'. The importance of *dharma* as an all-embracing institution was impressed upon the king by our writers so frequently that it must have had its psychological effect on every king. The idea that *daṇḍa* personified as a *Daity* might strike down the bad king himself (*Manu* VII. 19, 27, 28, 30, *Yāj.* I. 354-356) would tend to keep even a whimsical king within bounds. The views of ancient writers have already been cited according to which the king was not to act as he pleased, but was to regard his high office as a sacred trust and was to rule according to the dictates of the *śāstras*. These views created public opinion which must have certainly influenced the king's acts. The ideal king *Rāma* is depicted as having abandoned his queen *Sītā* (whom he knew to be pure) because the people could not accept her as pure after her long stay in *Rāvaṇa's* prison. Vide *Rāmāyaṇa* VII. 45. Then there were the ministers whose advice the king was enjoined to seek. Besides there was the *purohita* and there were learned *brāhmanas*,

who were to propound what dharma was, whose directions he was to carry out and who were supposed to have power to ruin a bad king (vide Vas. I. 39-41, Gautama XI. 12-14, Manu IX. 320). Vide H. of Dh. vol. II. pp. 138-145 for the peculiar sanctity attaching to the person of a brāhmana and the superior position of brāhmanas as a class *vis-à-vis* the king. There was a deep-rooted faith that the rules of the śāstras (the Śrauta and Smṛta dharma) were divinely inspired and were above the king. Observance of dharma was the great social and political ideal from very ancient times for all including the king. This is most emphatically put in the Br. Up. I. 4. 11-14, where it is stated "even after creating the four varṇas He (the Creator) did not think that stability had been attained. He then created the most excellent *Dharmam* which is the might of the mighty (i. e. more powerful than the warrior caste). There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the king. So what is called dharma is really truth. Therefore people say about a man who declares the truth that he is declaring dharma and about one who declares what dharma is they say that he speaks the truth. These two (dharma and truth) are this" (i. e. one).<sup>125</sup> Kāmandaka I. 14 stated that the Yavana king ruled over the earth for a long time because he ruled according to the dictates of dharma. In his administration of justice the king was to be checked by the judge and sabhyas, who were fearlessly to render advice to the erring king (as will be shown in the section on vyavahāra). Besides corporations and guilds were powerful and had a sort of self-government. Manu (VIII. 336 and Yāj. II. 307) went so far as to prescribe a heavy fine which the king was to inflict on himself for his illegal exactions and punishments and to direct that the king should distribute among brāhmanas wealth forfeited by grave sinners (Manu IX. 243-244). Lastly there was the final sanction that the śāstras allowed the subjects to abandon a worthless king or even to kill a misguided one or tyrant, as stated above (vide Manu VII. 27-28, Arthashastra I. 4).<sup>126</sup>

125. स नैव जन्मन्तश्चेषो कथमवबुजत धर्मं तदेतत्तत्परं सर्वं पद्वर्त्मस्त्वाद्यर्मात्पदे नास्ति । अथो जन्मलीयान्मल्लीयान्समाशंसते धर्मेन यथा राज्ञा । एवं यो वै स धर्मः सर्वं वै तत् तस्मान्मार्गे वदन्तमाहुर्धर्मं वदतीति धर्मं वा वदन्तं सर्वं वदतीत्येतदुच्येतेतदुक्तं भवति । बृह. उप. I. 4. 14.

126. दुष्यन्ति (दुष्ठाः) कामक्रोधान्महाभयान्महानपत्यवसिजाजक्यापि कोपयति किमिदं पुनर्हन्तवान् । अर्थशास्त्र I. 4.



Kautilya (VIII. 3) when dealing <sup>127</sup> with the evil results of want of discipline in a king states that kings who are hot-tempered are known to have fallen victims to popular fury (or the fury of ministers). We may say that in theory and so far as ordinary people were concerned the sovereign's power was absolute and unlimited as Manu IX. 9-12 aptly illustrate and as Bṛhat-Parāśara states 'the king is Brahmā, Śiva, Viṣṇu, Indra, he is the giver, the destroyer, and the enforcer according to the karma of his subjects'. But there were (as stated above) very real checks and limitations that effectively prevented him from exercising his undoubtedly unlimited powers. These checks, though real, cannot be called constitutional in the sense in which that word is used in modern times. As said by Nārada the subjects are dependent while the king is uncontrolled, but he could not go against the śāstra ( vide Haradatta on Gaut. XI. 2 ).

In modern times the activities of a sovereign person are three-fold, viz. executive, judicial and legislative. The judicial activities of the ancient Indian king will be dealt with in another section on law and the administration of justice. One great difference between ancient and modern societies is that the legislative action of the king was extremely limited in ancient times, while in modern times people are more and more looking to legislation for regulating all manner of things. Manu (VII. 13) lays down that since the king has in him the glory of all deities, whatever rule as regards desirable matters the king establishes and whatever action he declares as undesirable among those actions that are harmful, should not be transgressed by any one. In his gloss on this verse Medhātithi carefully points out what orders the king can issue and on what subjects he cannot issue orders. He gives the following instances of orders of both kinds: 'To-day all should observe a festival in the capital; all should attend a marriage ceremony at the house of the minister; animals should not be killed to-day by the butchers and birds should not be caught; debtors should not be harassed by creditors on these days (to be specified); no one should associate with such and such a man (an undesirable person); no one should allow a certain (undesirable) person to enter the house'. Medhātithi adds that the king is not authorised to interfere with the *strict rules* governing the

127. अविर्निशो हि भयसमक्षोपात् न पश्यति । तादृशदेशानः । कोपयन्नित्यर्थः । कामज-  
भयवर्ज्यः तयोः कोपो गरीयान् सर्वत्र हि कोपश्चरति । भाष्यस्य कोपयन्ता राजानः पशुनि-  
कोपयेदन्ताः शृण्वन्ते । अर्थशास्त्र VIII. 3.

varnas and āśramas such as the performance of agnihotra.<sup>127a</sup> This gloss of Medhātithi occurs word for word in the *Rājantī-prakāśa* (pp. 23-24), which gives a more correct text than the printed editions of Mandlik and Gharpure. Kautīlya (II. 10) devotes a chapter to the drawing up of *śāsana*s, particularly with reference to their linguistic elegance and diplomatic etiquette. The *Śukranītisāra* (I.312-313) prescribes that the king's edicts (*śāsana*) should be proclaimed to the subjects by beat of drum, that his edicts should be written and displayed where four roads meet, and that the king should declare that breaches of the orders would entail heavy fines. In I. 292-311 Śukra gives instances of such orders, the most important of which are: Watchmen should take rounds in the several streets every one hour and a half at night in order to prevent thieves and paramours moving about; people should not employ abuse or beating towards their slave, servant, wife, son or pupil; no one should practise deceit in respect of measures, weights, coins, resins, metals, ghee, honey, milk, fat, flour; no document should be got by force; no bribes should be taken nor should any bribes be given to persons engaged in doing the king's work; no one should offer shelter to bad characters, thieves, paramours, those who hate the king, the enemy; parents, persons worthy of honour, learned men, men of good character should not be disrespected or ridiculed; no dissensions should be sown between husband and wife, master and servant, between brothers, between teacher and pupil, between father and son; no interference or obstruction should be caused to wells, parks, boundaries, *dharmaśālās*, temples, roads or to those who are deficient in a limb; without the king's permission no one should engage in gambling, selling liquor, hunting, bearing arms, sale or purchase of cattle or elephants or horses or camels or she-buffaloes or slaves or immoveable property or silver, gold, gems, intoxicants, poisons, drugs, the profession of medicine or should pass a sale deed, deed of gift or give a decision about a debt; no one should falsely accuse another of the great sins, nor take treasure trove, nor frame new rules for clubs or convivial gatherings (*saṃāja*) nor should publish slander against a caste, nor should appropriate property which is without an owner or has been lost, nor divulge the (king's) lines of policy, nor babble about the vices of the king; the people should not

127a. न त्वद्विद्वोऽप्यवस्थाये वर्ज्याभिमितां राजा यमपतिं स्मृत्यन्तरिरीष्यन्सङ्गात्, अविरोधे आदिमन्त्र विषये न चानुसृत्यैव चरन्तु । मेधा- on मनु VII, 13,



even think of forsaking their dharma, speaking untruth, committing adultery with another's wife, giving false evidence or fabricating documents, accepting gifts secretly, committing thefts and engaging in other desperate acts, engaging in sedition; public servants should not exact more than the tax already settled; only such weights and measures are to be used as bear the royal stamp; all subjects should strive to possess good qualities; desperadoes should be arrested and handed over to the king; bulls let loose (in memory of the dead) should be kept well controlled and fed by those who let them loose. Medhātithi on Manu VIII. 399 states that a king may prohibit the export of foodstuffs from the kingdom in a famine. The several edicts of Aśoka show that his orders were framed on the same lines that are contained centuries later on in the Śukranitiśāra. Most of his proclamations insist on moral virtues such as truthfulness, obedience and reverence to parents, elders and preceptors, honouring brāhmanas and śramanas, kindness to animals, tolerance of other faiths. Proclamations that may be called positive laws are very few, such as his order in Pillar Edict IV to give three days' respite to criminals condemned to death (C. I. I. vol. I p. 125) or his regulations restricting the killing of animals contained in the 5th Pillar Edict (C. I. I. vol. I p. 138) or in the First Rock Edict at Girnar (p. 7) 'no living being must be killed or sacrificed and no festival meeting must be held'. In the reign of Avantivarman of Kashmir the killing of living beings was prohibited for ten years (vide *Rajatarāṅgini* V. 64). Law-making in the modern sense is almost entirely lacking in the smṛtis. Gaut. XI. 19-25 show<sup>128</sup> that the king was to find the law required for the decision of causes from the following, viz. (1) the Veda, Dharmaśāstras, the Aṅgas (lores auxiliary to the Veda such as grammar, exegesis, metrics etc.), Upavedas, Purāṇas; (2) customs of countries, castes and families that were not opposed to the Veda; (3) the usages of husbandmen, traders, herdsmen, money-lenders and artisans; (4) ratiocination; (5) the opinions<sup>129</sup> delivered

128. तस्य च स्वप्रहारो वेदो धर्मशास्त्राश्च द्वास्तु वेदाः शास्त्रम् । देशजातिकुलधर्मा-  
श्चास्मायैव विद्वद्भिः प्रमाणम् । कथं कथं निश्चयं भुवनाल्लोकानि जायते : सोऽस्य धर्मः । ... न्यायाधि-  
नये तर्कान्तरायाः । ... विप्रतिपत्तौ वैचित्र्यदृष्टेः । कथं कथं विद्वोऽप्यवेत्तुं तथा तस्य निश्चयं  
भवति । नो. XI. 19-25.

129a. चरप्रहारो वेदधर्मज्ञाः पर्यंत वैचित्र्येन वा । सा जने न स धर्मः स्वादेशो वाधवा-  
त्प्रविशमा ॥ च. I. 9, on which विश्वकर्म remarks नानुष्णाह । अतिविरोधे वैचि-  
त्र्यमवाप्ये निर्णयः इति प्रमाणलेखे शास्त्रगतोऽनुपपत्तिश्च । These two show that  
pariśad and traidiśya were more or less synonymous.

by the assembly (*pariṣad*) of men deeply learned in the three Vedas. The authoritativeness of customs, usages and conventions and their relation to *śāstra* will be discussed later on. In the decision of causes there were four deciding factors, *dharma*, *vyavahāra*, *cāritra* and *rājāsāsana*, which will also be dealt with later. So royal edicts or orders first came to be made in the administration of justice and probably served as laws or precedents in later times. Vide H. of Dh. vol. II. pp. 968-970 for the role of *pariṣads* in religious matters. Yaj. I. 9 and Śāṅkha speak of *pariṣat* or assembly of learned men as final authorities on *dharma*.

The executive functions of the king required a large number of ministers and officers. This topic will be dealt with immediately below.

There is another way of looking at the king's functions viz. they were religious and secular. The first required him to do certain acts for propitiating gods and unseen powers and removing dangers therefrom with the help of the *purohita* and sacrificial priests (vide Gaut. XI. 15-17, Yaj. I. 308) and he had to guard *dharma*. His secular functions included those that led to prosperity, that helped the people in famine and similar calamities, dealing even-handed justice, guarding person and property from thieves and trespassers and against invasion.

The Mahābhārata records the tradition that many kings of former times abdicated the throne in favour of their sons and resorted to the forest as hermits. Vanaparva 202.8 mentions Brhadaśva who crowned his son Kuvalāśva. Vide also Vāyu 88.32. Dhṛtarāṣṭra says to Yudhiṣṭhira that in their family it was customary for kings to transfer the sovereignty to their sons and resort to a forest towards the close of their lives (Āśramavāsi 3.38). Vyāsa says that that was the practice of all *rājaraṣas* (Āśramavāsi 4.5) and the Āśramavāsi-parva (20) mentions the names of several such kings. Vide also Śānti 21.15. In Ayodhya 23.27, 94.19 this practice is referred to.<sup>129</sup> In the Raghuvamśa (I. 8, XVIII. 7, 9, 26) Kalidāsa says that in the family of Raghu kings in their old age became *munis* (hermits) and in chap. VIII. 11-23 he draws a fine contrast between the lives of Aja and his father Raghu (who had become a *yati*). There are Jain traditions of some antiquity that connect the

129. पूर्वराजर्षिहृष्या हि वनवासोऽभिधीयते । यत्र निश्चिन्त्य बुद्धेर्बुधवत्परिपालनं ।  
अपरोषा 23. 27 । इत्येवमायुर्लभ्यं प्राहुः राज्ञि राजर्षयः वने । वनवासं महाबाहो देव ते । यमिना-  
मृतः ॥ अपरोषा 94. 19.



grest Jain sage Bhadrabāhu, the last Śrutakevalin, with Candragupta Maurya, who is said to have abdicated in favour of his son and to have gone to Śrāvastī Belgola. Vide Indian Antiquary, vol. 21 pp. 156 ff where Fleet criticizes this tradition and rejects it. In the Divyāvadāna (XXIX p. 431, ed. by Cowell and Neil) it is stated that Aśoka died destitute of power<sup>130</sup> and possessions and Fleet (in J. R. A. S. for 1913 pp. 656-658) says that there is in this probably a reminiscence of abdication by Aśoka. King Lavaprasāda of the Vāghela dynasty in Gujerat abdicated in favour of his son Viradhavala (1233-38 A. D.). Vide Bombay Gazetteer, vol. I part 1 pp. 198, 200, 206.

Kauṭilya (VIII. 2) speaks of a novel rule called 'dvairāja' (sovereignty of two) and distinguishes it from 'vairāja'. The Mss. differ in their readings, but the reading given in the footnote by Dr. Sham Sastri seems preferable. Kauṭ. remarks "As between dvairāja and vairāja (foreign rule) the former perishes on account of mutual hatred and rivalry; but the latter according to the *ūcāryas* is enjoyed by foreigners as it is, when it pays attention to winning over the subjects; 'No' says Kauṭilya 'dvairāja' (generally) exists between father and son or between two brothers, their welfare is the same and therefore by reason of the influence of *amātyas* (over the two rulers) it can last, but *vairāja* comes into existence by being seized from another king who is living and therefore the (foreign ruler) thinking 'this country is not mine' impoverishes it and carries off its wealth or treats it as a chattel (for sale) or when he finds that the country is disaffected towards him abandons it and goes away". This remarkable passage contains the mentality of foreign rulers in a nutshell. Manu IV, 160 in a lucid and laconic manner states how individual and national happiness lies in freedom. Kālidāsa in his *Mālavikāgnimitra*<sup>131</sup> (Act V) appears to refer to the conception

130. अशोक is said to say 'दाक्षिणाद्वर्तते हि हिं कथंचन ब्रह्मविद्यायां सर्वं श्रेयं त्वामलकार्पणित्यवासितं च च यद्वर्तते मम । येनैवं धिगन्तार्यमुद्धतनदीतीव्रपक्षेणोत्तमं मेरुद्वयं नमसि पत्यतिचर्यं दाक्षिण्यमपागतम् ॥' *विद्यावदान* XXIX p. 431.

131. हेराज्यवैराज्ययोः हेराज्यमन्योर्यवकहेचाकुरामाग्यो परस्परसङ्घर्षेण वा विनश्यति । वैराज्यं तु पकृतिचिरप्रज्ञायेति यथारिपतमर्षेयुज्यत इत्याचार्याः । नेति कौटिल्यः पितायुच्योर्जायोर्वा हेराज्यं तु यवयोन्मेषममनात्पश्यदं योपेतेति । वैराज्यं तु जीवतः परस्परच्छिद्य भेदन्मतेति मन्थमानः कर्षपरस्परहावति पश्यं वा करोति विरक्तं वा परित्यज्यापमयतेति । अर्थशास्त्र VIII. 2.

132. तत्रमन्त्राग्र्योर्गजसेनमाधर्षसेनयोर्हेराज्यमिदानीमवस्थापितुकामोऽस्मि । तौ ह्यज्यवद्वर्तते सिद्धास्तुवरदक्षिणे । नक्तंदिनं विमन्त्रांशो ज्योतिष्ककिरणविश्रुतिः । द्विधा विमन्त्रां विप्रसृज्यन्तौ युरं यथाचार्यैः संवह्यतुः । तौ स्थापयन्तौ ह्यपतेभिर्देशे परस्परव्यवहृतिविकारौ ॥ *मालविका* V, 13-14.

of dvairājya when he makes Agnimitra say that the latter desires to establish a dvairājya for the brothers Yājñasena and Mādhavasena on the north and south banks of the river Varada, who would both remain under the command of the king (Agnimitra). In the Mahābhārata a similar rule of two brothers, Vinda and Anuvinda in Avanti, appears to be referred to (vide Udyogaparva 166, cr. ed. chap. 163). MacCrindle in 'Invasion of India by Alexander' p. 296 quotes Diodorus to the effect that Alexander sailing up the river came to Taula (Patala?) a city of great note with a political constitution drawn on the same lines as the Spartan, for in this community the command in war was vested in two hereditary kings of two different houses, while a council of elders ruled the whole State with paramount authority. Vide Jayaswal's 'Hindu Polity' part I pp. 96-97 and Dr. D. R. Bhandarkar's 'Ancient Indian Polity' p. 99-100 for some further details on dvairājya from Buddhist and other sources.

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## CHAPTER IV

### MINISTERS

*Amātya*—The second of the seven elements of *rājya* is the *amātya*, which word may be translated as 'minister.' There are three words that are interchangeable though sometimes distinguished, viz. *amātya*, *saciva* and *mantrin*, the first being the oldest of the three. A *Karika* on Pāṇini (IV. 2. 104) teaches the formation of the word with the affix *tyap* (tya) from *amā* meaning 'near or with' (vide *Mahābhāṣya*, vol. II. p. 292). In Rg. IV. 4. 1<sup>133</sup> there is the germ of this word 'O Agni! Go like a king riding an elephant, accompanied by his ministers'. Yaska (in *Nirukta* VI. 12) explains 'amavān' as 'amātyavān,' though two more explanations of the word are offered by him. The word *amātya* itself occurs in Rg. VII. 15. 3, but there it is an adjective and means 'our own' or 'abiding in our house'. In some of the *sūtras* like the *Baudhāyanapitṛ-medhasūtra* (I. 4. 13, I. 12. 7) the word *amātya* is used in the sense of 'near male relations in the house'. Vide H. Dh. vol. II. p. 588 n. 1375. The word 'amātya' occurs in the sense of minister in Āp. Dh. 8. II. 10. 25, 10 'The king should not live better or more luxuriously than his *gurus* (elders) and his ministers (*gurun-amātyānśca nātijīvāt*)'. The word 'saciva' occurs in the Ait. Br. (XII. 9) where it is said that Indra considered the Maruts as his 'sacivas' (helpers or comrades). The necessity of *amātyas* or *sacivas* is stated in graphic language by several writers. Kautilya (I. 7 last verse) says 'kingship is possible only with (the aid of) assistants, a single wheel cannot work (a chariot); therefore the king should appoint ministers and listen to their opinions'. Manu (VII. 55 = Śukra II. 1) says 'it is difficult for a person single-handed to accomplish even an easy task; how can government particularly, which has great good as its aim, be accomplished without helpers'? The *Matsya-purāṇa* (215. 2) prescribes 'the king, while his head is still wet with the waters of coronation, if he wants to supervise his State, should choose his helpers, as in the latter the kingdom secures stability'. *Matsya* 215. 3 is the same as Manu VII. 55. Vide

133. कुलुष पादः पश्चिनि न दृक्छी वादि राजेश्वरौ दृमेन । क. IV. 4. 1. वादि राजा द्वे अमोदपचानि अमममवात् स्ववात् वा । निबन्ध VI. 12.

Viṣṇudharmottara II. 24. 2-3 which are the same as Matsya 215. 2-3; also Śānti 106. 11 and Rājantīprakāśa p. 174. From Arthasāstra I. 7 and 8, Manu VII. 54 and 60, Kām. IV. 25, 27, XIII. 24 and 64 it appears that they use the words *saciva* and *amātya* as synonyms. Rudradāman in his Junāgadh Inscription<sup>134</sup> (E. I. vol. VIII. p. 36 at p. 44) states that his great enterprise to repair the Sudarsana lake was disapproved of by his advisory (*matī-saciva*) and executive councillors (*karmasaciva*) who were all endowed with the qualities required in *amātyas* and yet who were averse to the project and had no enthusiasm for it, since the breach to be repaired was very great. Here *sacivas* are divided into two sorts, those who give advice and those who execute the business decided upon and the word *saciva* seems to be a synonym of *amātya*. Amara<sup>135</sup> states that the *amātya* who is a *dhisaciva* (i. e. *matsaciva*) is called a *mantrin*, while *amātyas* other than the *mantrin* are called *karmasacivas*. These distinctions are often not observed. Sumantra is called *amātya* in Rāmāyana I. 7. 3 and the best of *mantrins* in I. 8. 4. In Ayodhya 112. 17 *amātya* and *mantrin* seem to be distinguished. From Kauṭ. I. 8 (last verse) 'Having divided the spheres of their powers and having taken into consideration the time and place and the work they have to do, all these persons should be appointed as ministers (*amātyas*), but not as *mantrins*.' It follows that *mantrins* were regarded by Kauṭilya as of a higher grade than *amātyas* in general. The R. N. P. p. 178 says that the *amātyas* are also styled *mantrins*. Kauṭilya states (I. 10) how *amātyas* are to be tested by *upadhā* i. e. by means of tempting them as regards each of *dharma*, *artha*, *kāma*, and *bhaya* (fear) and to be employed if found honest after any one of the four tests, while *mantrins* were to be appointed only if their integrity and loyalty were proved by all the tests combined. *Upadhā*<sup>136</sup> is defined by the Nītivākyaṃṛta p. 111 as 'testing the mind of a person as regards *dharma*, *artha*, *kāma* and *bhaya* by various devices' (employed by secret agents). Kāt. (4-5) quoted by R. N. P. p. 136 states that the minds of kings always go astray on the (slightest) cause by

134. अस्मिन्मये महाकृत्तव्यस्य मत्तिसचिव-कर्मसचिवैर्मन्त्रैश्चमन्त्रैश्चैरिति महाबाहो-  
द्वेषात्सहचिदुक्तमितिभिः सप्राकृतात्तारमम् &c. E. I. VIII. p. 36 at p. 44, l. 17

135. मन्त्री धीमत्सचिवोऽमापत्ये कर्मसचिवस्ततः । अमरकोश II. अविश्वमे.

136. धर्माधिकात्मन्येषु प्याजेन परचित्परीक्षणमुपधा । नीतिवाक्यामृत (मन्त्रि-  
समुद्देश 14 p. 111) : उत्तरेषु धीमते पन्नाहुपधेति शतः स्मृता । उपधा उपधा ज्ञेयस्ते-  
षामाधान्यरीक्षयेत् ॥ कामन्दक IV. 27.



reason of the fact that they possess great valour, knowledge, wealth and particularly the fact that they possess absolute power; therefore brāhmapas should always enlighten the mind of the king as to the duties of a king.

About the number of members in the council of ministers there has been a great divergence of views from ancient times. Kauṭ. I. 15 and Kām. XI. 67-68 state that according to the Mānava school the council (*pariṣad*) of ministers should be constituted of twelve amātyas, acc. to the Bārhaspatyas of 16, acc. to the Auśanāsas of 20, but Kauṭīya's own opinion was that the number is determined by the power or exigencies of the State (*yathāsāmarthyam*). The Bṛāhmasphuṭa (7. 2-3) states that Dasaratha had eight honest and devoted amātyas (who are then named). Manu VII 54 and Mānasollāsa (II 2. verse 57) require that the king should select seven or eight ministers who should be hereditary, versed in the śāstras, brave, born of high family and well-tested. This advice was followed by Shivaji, the founder of the Maratha empire, who had a council of eight ministers (*Pradhānas*). Vide Ranade's 'Rise of the Maratha Power' pp. 125-126 where he describes the functions of the eight ministers called 'Mukhya-pradhāna' (Prime minister), Pant Amātya (Finance minister), Pant Sachiva (General Accountant and Auditor), Senāpati (Commander-in-chief), Mantri (in charge of king's private affairs), Sumanta (Foreign Secretary), Panditrao (in charge of the Ecclesiastical Department), Nyāyādhishta (Chief Justice). This list was probably taken by Shivaji's advisers from the Śukranitisāra II. 71-72 where almost the same eight are said to be the ministers according to some. Vide also Grant Duff's History of the Marathas, vol. I p. 193, and Rao Bahadur Wad's selections of *śanads* and letters (in Marathi) published by Messrs. Mawajee and Parasnis in 1913, where the names of the eight ministers of Shivaji are stated and their duties are described (p. 123). In the Śāntiparva (85. 7-9) it is declared that the king should have 37 sacīvas, of whom 4 should be learned and bold brāhmapas, 8 valiant ksatriyas, 21 prosperous vaiśyas, 3 śūdras and one *sūta* versed in the Purāṇas, but verse 11 adds that the king should discuss and settle lines of policy in the midst of eight mantrins and Śānti 83. 47 says that mantrins should not be less than three. In the Rāmāyaṇa (II 100. 71) Rāma whom Bharata came to meet in the former's exile asks him whether he held consultation with three or four mantrins and (in verse 18 = Sabhāparva 5. 30) Rāma hopes

that Bharata did not settle his policies by himself alone or in consultation with too many ministers. Kautilya also (I.15) lays down that the king should hold consultation with three or four mantrins. The *Nītivākyaṃṛta* (*mantrisaṃuddheśa* pp. 127-128) holds that they should be three, five or seven, that unanimity is difficult to secure in a group of persons of different characters and that when there are many ministers they are jealous and try to carry out their own ideas. These passages show that firstly there was to be a small cabinet of three or four ministers, secondly there was to be a council (*pariṣad*) of ministers who might be eight or more in number according to requirements and thirdly there was a large number of *amātyās* or *sacivas* (high functionaries concerned with various departments). The council is mentioned in the 3rd and 6th Rock Edicts of Aśoka (Corpus I. I. vol. I. p. 4 'pariṣā pi yute ājñāpayiṣatī') in the words 'the council will order the officers called Yuktas'. The qualifications of ministers (*amātyas*) are laid down in several places e. g. in Kautilya I. 9, Manu VII. 54, Yaj. I. 312, Kam. IV. 25-30 (of which verses 28-30 are almost the same as the words of Kautilya), Śānti 118. 2-3 (14 qualities of mantrins are mentioned), Śānti 80. 25-28, Balakāṇḍa 7. 7-14, Ayodhyakāṇḍa 100. 15, Mdhātīthi on Manu VII. 54, Agnipurāṇa 239. 11-15 (= Kam. IV. 25 and 28-31), Mānasollāsa II. 2, verses 52-59, *Nītivākyaṃṛta* p. 108, *Rājantīratnākara* pp. 13-14 (quoting Nārada and Hārīta), *Rājantīprakāśa* pp. 174-178, *Rājadharmakauṣṭubha* pp. 251-254, *Budhabhūṣaṇa* pp. 32, 57-58. Only the qualities required by Kautilya in *amātya* are set out here: He must be a native of the country, born of high family, influential, well-trained in arts, far-sighted, wise, of good memory, vigilant, eloquent, bold, intelligent, endowed with enthusiasm and dignity, capable of endurance, pure (in mind and actions), well-disposed, firmly devoted (to the king), endowed with character, strength, health, spiritedness, free from arrogance and fickleness, affectionate, who would not have recourse to hatred (even when offended by the king). Kautilya states that *amātyas* are of three kinds, the best, middling and inferior, of which the first must be endowed in full with the qualities set out by him and the other two are deficient by one quarter and a half respectively. In Śānti 83. 35-40 the faults that disqualify a person for being a mantrin are stated and verses 41-46 set out the qualifications for a mantrin, one of which deserves special notice, viz. (verse 46) he should have secured the confidence of the *pauras* and *jānapadas*. Many works prescribe that the ministers were



to be hereditary if the son was capable like his father, e. g. Manu VII. 54, Yāj. I. 312, Rāmāyaṇa II. 100. 26 (= Saṁhāṣarpa 5. 43), Agni. 220. 16-17, Śukra II. 114. The Matsya 215. 83-84 and Agnipurāṇa (220. 16-17) add the very sensible remark that such hereditary ministers should not be allowed to dispose of the cases of their *dāyādhas* (agnates). The Viṣṇudharmottara (II. 24. 55-56) contains the same rule. This hereditary character is borne out by many inscriptions. For example, in the Allahabad stone pillar ins. of Samudragupta, Harisena is himself a Mahādanda-nāyaka whose father Dhruvabhūti was also a Mahādanda-nāyaka (Gupta Inscriptions pp. 10, 15) and in the Udayagiri cave Inscription of Candragupta II (ibid. p. 34) Virasena is described as 'anvayaprāptasācivya' (who hereditarily obtained the post of *sacien*). The R. N. P. (p. 176) after quoting the Matsya-purāṇa expressly states that the hereditary principle was to be given up, if the son or grandson of a former minister had not the requisite qualifications, but that such a descendant was to be employed only in such state work as was suited to his<sup>137</sup> attainments. The ministrs should, according to most authorities, be chosen from among brāhmanas, ksatriyas and vaiśyas, but not from sūdras, even if the latter be endowed with qualities (vide Śukra II. 426-427, Nītivākyaṁṛta p. 108).<sup>137a</sup> The consultation with the council of ministers was to be in secret. Kautilya (I. 15) says 'All administrative undertakings must be preceded by consultation with ministers. The place for consultation should be so secluded that the conversation going on inside will not be heard outside and that even birds cannot see it, for it is narrated that secret consultations were divulged by parrots, *mainas*, dogs and other lower animals'.<sup>138</sup> The Harṣacarita VI states that Nāgasena of the Nāga dynasty met destruction in Padmāvatī because his secret policy was divulged

137. मन्त्रद्वाराणेति । गुणहीनानपि तथा विज्ञाय स्वपतिः स्वयम् । कर्मस्वेव निपुञ्जीत  
कथायोग्येषु भागशः । अत्रापि वाक्यार्थः । यदि मौल्यं कुलीना अपि तथा विवृणोतामप्यद्वय-  
गुणहीनास्तस्मात्तथापि गुणहीनानपि विज्ञाय कथायोग्येष्वेव कर्मसु स्वयं भागशः कर्मविभागेन  
निपुञ्जीत च तु तत्रापि विवृणोतामप्यद्वयं तत्र तत्र तेषामयोग्यत्वात् । रा. नी. 2. p. 176.

137a. ब्राह्मणक्षत्रियविज्ञानेकतमं स्वदेशजनानामभिजनविद्वज्जनपदसन्निवृत्तानामि-  
ति चारिणमपि तस्मात्तथापि गुणहीनानपि विज्ञाय कथायोग्येष्वेव कर्मसु स्वयं भागशः कर्मविभागेन  
निपुञ्जीत च तु तत्रापि विवृणोतामप्यद्वयं तत्र तत्र तेषामयोग्यत्वात् । रा. नी. 2. p. 176.

138. मन्त्रद्वारा । सचोदयता । तद्विषयः संज्ञितः कथनामनिर्वाही पक्षिभिरनाहोरात्र-  
स्पातु । श्रुते हि शुकसाहसिकाभिः मन्त्रो भिन्नः अभिरुन्धैश्च विवृणोतामि । अर्थशास्त्र I. 15 ;  
compare हर्षचरित VI 'नामकुलजनानः सपरिकाशान्तिमन्त्रपर्यासीनां भागसेनस्य  
पक्षाक्षपात् । शुककुलजनस्य च अहोरात्रिणः कुतर्पणः आचस्तात् ।

by a *mainā*, Śrutarvarman lost his kingdom in Śrāvastī as his secret was disclosed by a parrot, and king Suvarṇacūḍa met his death in Mrttikāvati by babbling in a dream about his policy. Vide also Manu VII. 147-150, Yaj. I. 344, Kām. XI. 53, 65-66, Agnipurāṇa 225. 19, Mānasollāsa II. 9, verses 700-705 p. 92. Kaut. (I. 15) has a verse 'no outsider should know the king's secret policy which he desires to carry out. Only those who are to carry it out should know it only when it is begun or accomplished'. Vide for a similar rule Manu VII. 105 (= Śānti. 140. 24 which is also the last but one verse in Kaut. I. 15).<sup>139</sup> The king presided in the council, but if he was not present the chief minister presided (Manu VII. 141). In the *Mālavikāgnimītra* (V) the king's decision to make a *dhairājya* is conveyed to the council of ministers and then the *amātya* (who here means the chief minister or President of the council) informs the king that the council agreed with the king, whereupon the king asks the council to depute the commander-in-chief Virasena to carry out the proposal. Kaut. further says (I. 15) that all business was to be transacted in the presence of the ministers; but if any one was absent his opinion was to be elicited by despatching a letter. In matters of emergency (or great danger) the king is to call his cabinet ministers and the council of ministers and what the majority decide or what would lead to success is to be carried out by the king. Śūkra I. 365 also refers to the view of the majority. It is the duty of the ministers, according to Kām. IV. 41-49, to prevent a king from pursuing an evil course, it is the duty of the king to listen to the advice of his ministers and such ministers are not merely his friends but are really his *gurus*.<sup>140</sup> Śūkra (II. 82-83) asks 'How can the kingdom be brought to prosperity by those ministers whom the king is not afraid to offend? They are no better than ladies who are to be decked with ornaments and fine clothes. What is the use of those ministers, whose advice does not tend to the advancement of the kingdom, the people, the army, the treasury, good government and to the destruction

139. मास्य छिद्रे परः पश्येच्छिद्रेषु परमान्वितः । यदेकैर्न द्रव्यद्वानि रवेद्विर-  
मात्मनः ॥ शान्ति 83. 49 and शान्ति 140. 24 with slight variations; कौटिल्य  
reads मास्य छिद्रे परे विद्युच्छिद्रे विद्योत्तरस्य च । ... यत्प्राद्विद्युत्तमात्मनः ॥

140. सज्जनानमकार्येषु निदग्धुर्मन्त्रिणो वृषद् । सुखानिव चैतेषां सुसुखादचनं  
वृषद् ॥ ... वृषस्य ते हि सुहृदस्त एव हृदयो मताः । य एमसुखवसते वारपनमविचारिताः ॥ सज्ज-  
नानमकार्येषु सुहृदो वारयन्ति ते । सत्यं ते नैव सुहृदो हृदयो हृदयो हि नैव कामन्दक  
IV. 41, 44-45.



of enemies? The ministers, however, must have found it difficult to please the king and also to placate the subjects. A well-known subhāsita states that one who looks to the benefit of the king comes to be hated by the people and he who looks to the good of the people (only) is abandoned by the king; when there is this great conflict it is rare to find a person who can secure the aims of both the king and the people.<sup>140</sup> Manu (VII. 56-59) prescribes the matters in which consultations are to be held with ministers and the procedure thereof, viz. peace and war, *sthāna* (i. e. army, treasury, capital and the country), sources of revenue, protection (of himself and of the country), the proper bestowal of the wealth obtained; the king is to ascertain the opinions of ministers separately and then jointly and then do what is beneficial; he is then to hold consultation on the most important affairs relating to the six means of policy with a wise brāhmaṇa who is the most distinguished of all ministers and always to rely upon him, to settle all lines of policy finally on his advice and then to act. Yāj. I. 312 also requires the king to consult his *mantrins*, then a brāhmaṇa (purohita) and thereafter to decide himself the course of action. The principal matters which mantrins have to concentrate themselves upon, acc. to Kām. XIII. 23-24 (= Agnipurāṇa 241. 16-18), are: *mantra*, securing the fruit of the line of policy adopted (such as conquering a country and protecting it), the carrying out of the business (of the State), predicting the good or evil effects (of an action taken), revenue and expenditure, government (i. e. punishing those who deserve punishment), subduing enemies, measures against calamities like famine, guarding the king and the kingdom.<sup>141</sup> The Nītivakyāmṛta (p. 185) concisely puts the same by saying that amātyas have to concern themselves with revenue, expenditure, guarding the ruler (i. e. his body, his dharma, wife and children), looking after the army in all its arms.

Yāj. I. 343 says 'since the State depends upon *mantra* (i. e. lines of policy arrived at after consultation with ministers), the

140a. अस्मिन्निहितकर्ता द्वेष्यतां याति लोके जन्मदहितकर्ता त्वज्यते पापिषेन्दैः । इति यदिति विरोधे वर्तमाने समाने सुपतिजनपदानां दुर्लभः कार्यकर्ता ॥ q. by B. p. 86, last pāda being read as बहुभयहितकर्ता त्वज्यते पापिषेन्दैः.

141. मन्त्रो मन्त्रफलदायकः कार्यानुष्ठानमायकः । आचार्यपौ दुष्टनीतिरनिष्टवर्ति-  
वेधनम् ॥ एतन्नरस्य प्रतीकारो राजराज्याभिरक्षणम् । इत्यमरवत्स्य कर्मदे इति स मन्त्रना-  
म्नितः । कामन्दक XIII. 23-24 and अग्निपुराण 241. 16-18; आचो एवम् इति निरुद्धा  
मन्त्रपौषां आनामवागमाधिकारः । नीतिवाक्यामुत (अमरयसमुद्देशः) p. 183.

king should keep his lines of policy secret in such a way that people should not know them till the results of his undertakings manifest themselves'. Kautilya (X. 6 last verse) emphasizes the importance of mantra in 'an arrow discharged by an archer may kill one man or none at all, but a (well-considered) scheme put into operation by a wise man may destroy even those who are only conceived'.<sup>142</sup> Both *Sabbhāparva* 5. 27 and *Ayodhyā* 100. 16 have the same verse, viz. *mantra* is the root of victory.<sup>143</sup> Kautilya and the *Nitivākyaṃśāp*. 114 say that *mantra* accomplishes the following, viz. the apprehension of what is not or cannot be seen, imparting the strength of definite conclusion to what is apprehended, removal of doubt when two courses or opinions are possible, inference of an entire matter when only a part is seen.<sup>144</sup> In most works such as Kauṭ. I. 15, Kām. XI. 56, *Agnipurāṇa* 241. 4, *Pañcatantra* I. p. 85, *Mānasollāsa* (II. 9 verse 697 ff. p. 92) it is said that *mantra* has five elements which have to be considered (it is *pañcāṅga*), viz. means of carrying out actions (or works), plenty of men and materials, proper allotment of time and place, remedies against pitfalls, the (happiness of the kingdom or people) that will result from the accomplishment of the course decided upon.<sup>145</sup>

The high functionaries and office-holders have been different at different times. In the Vedic age, in the performance of the *Rajasūya*, there are certain offerings (generally twelve in number) which are called 'ratninām havinsī'. Their order and names differ in different texts, though most are the same in all. Besides the king (the sacrificer), the eleven 'ratnas' (jewels) or 'ratnins' are (according to the *Śat. Br.* V. 3. 2), the commander-in-chief, the *purohita*, the crowned queen, *sūta grāmaṇi*, *ksatṛ* (chamberlain), *saṅgrahitṛ* (treasurer or charioteer?),

142. एकं दण्डाकं वा दण्डपादितुः किलो धनुष्मता । दाज्ञेन तु मतिः क्षिता दण्डादुप-  
स्तानमि ॥ अर्थशास्त्र X. 6 last verse, quoted in पञ्चस्तोत्रक III. p. 386.

143. मन्त्रो विजयमूलो हि राज्ञां भवति रायम् । अयोध्या 100. 16; विजयो मन्त्र-  
मूलो हि राज्ञां भवति भारत । सभा 5. 27.

144. अनुपलब्धस्य ज्ञानानुपलब्धस्य निश्चयकलाधानमर्थद्वैधस्य संशयोच्छेदमेकदेश-  
दस्य बोधोपलब्धिरिति मन्त्रसाधनमेतत् । तस्माद् इन्द्रिन्द्रोः सार्धमासीनं मन्त्रम् । अर्थशास्त्र  
I. 15 and नीतिशा, p. 114, which reads उपलब्धस्य निश्चयो निश्चितस्य कलाधानम्.

145. कर्मणामारम्भोपायः, उरुषद्रूपसम्पत्, देशकालविभागः, विनिर्वातयवीकारः,  
कार्पसिद्धिरिति पञ्चाङ्गो मन्त्रः । अर्थशास्त्र I. 15; सहायः साधनोपाया विभागी देश-  
कालयोः । विप्लवेभ्यः परीकारो मन्त्रः पञ्चाङ्ग इत्यने । कामन्दक XI. 56. It will be noticed  
that Kām. omits कार्पसिद्धिः and makes up the five by counting देशविभाग  
and कालविभाग separately.



*akṣāṇḍīpa* (superintendent of gambling or of the records?), *bhāgadugha* (collector of taxes), *govikartana* (? hunter), *dūta* (courier), *parivṛkti* (discarded queen). Vide H. Dh. vol. II. p. 1215 n and 1216. In Tai. Br. (I. 7. 3) they are the same as above except that *govikartana* is omitted and the queen called 'vavāta' is added. These are described in the Tai. Br. I. 7. 3 as the bestowers of the kingdom (ete vai rāṣṭrasya pradātaraḥ). Vide also Tai. S. I. 8. 9 1-2. It is clear from Sat. Br. V. 3. 2. 2 and 4 that some of these jewels like the commander-in-chief and the huntsman were of low caste or of the śūdra caste. Later on certain functionaries began to be called *tirthas*, their number being 18; vide *Saṁhāparva* 5. 38 (= *Ayodhya* 100. 36) and *Śānti* 69. 52 for a reference to the 18 *tirthas*.<sup>146</sup> Kautilya (I. 12) speaks of the 18 *tirthas* and enumerates them.<sup>147</sup> In the *Raghuvamśa* 17.68 Kālidāsa employs the word *tirtha* in this sense. According to the *Nītivākyaṁṛta* (p. 29) persons who are helpers in dharma and state business are called *tirtha*. In the Edicts of Aśoka the high officers were called *mahāmātras* (in Rock Edict XII there are *dharma-mahāmātras*) and other officers were *yuktas*, *rājukas* and *pradeśikas* (in Rock Edict III) of whom the first at least were subordinate to the council of ministers. Later writers like Govindarāja on *Ayodhya* 100. 36, the com.

146. कश्चिद्वाद्दशान्वेषु स्वयमे दश पञ्च च । विभिन्निरतिज्ञानैरेषि तेषां नि चारकैः ॥ अथोपर 100. 36 = समापर्व 5. 35 = मोक्षिकाशिका I. 52.

147. राज्यराजा स्वयमेव मन्त्रि-पुरोहित-सेनापति-पुरवराज-दौवारिकान्तर्बन्धिका-महामन्त्र-समाहर्तु-संनिधातु-पदेष्टुनायक-पौरपात्राहारिक-कामान्तिक-मन्त्रिपरिवर्षपक्ष-दण्डदुर्गमन्त्र-पादावधिकेभ्यु अन्तर्पदेष्टुवैपश्चित्त-भाषामेजयापदेशान् यत्किञ्च साम्प्रदर्शयोपाध्यायसर्वमेतु ।... एवं शस्त्री च मित्रे च मन्त्रमे चापरेच्छरन् । उदासीने च तेषां च विधिष्वद्वाद्दशस्वति ॥ अर्थ-शास्त्र I. 12. दौवारिक is lit. doorkeeper i. e. Lord Mayor of the palace; अन्तर्बन्धिका is Lord Chamberlain (the same as स्वयम्भक्त or कलत्रारवक्त in *Āśvamedhika-parva* 22. 20 and *Sāhya* 29. 72 and 94 and the स्वयम्भक्तमहामात्र in the 12th Rock Edict at Girnar or Mansehra in *Corpus I. l.* p. 30; and the अन्तर्पुरावक्त in *मत्स्यपुराण* 215. 42). महामन्त्र is probably Chief Magistrate. समाहर्तु is the minister or the Chief Commissioner of Revenue. संनिधातु is the minister in charge of the Treasury, पदेष्टु functionary not known, नायक is probably नगराध्यक्ष. पौरपात्राहारिक is the Chief Justice whose court was in the capital. कामान्तिक was superintendent of all mines and State manufactories, दण्डपाल was officer in charge of all branches of the army, दुर्गपाल (= राजपाल) officer in charge of all foris, अन्तर्पाल officer in charge of all frontiers, आदर्शिक superintendent of forests and forest tribes. It is possible to regard पदेष्टुनायक as one word meaning the chief of *pradeśas* (they were many, acc. to Kautilya V. 2) and to take Panra as equal to the *Nāgaraka* i. e. capital Superintendent (vide *Arthashastra* II. 36) and *Vyāvaharika* as Chief Justice. For मोक्षिकान् see *विवाद* 2. 7. (cr. ed.).

on the *Yasastilaka* I. p. 91 differ as to the names of these 18.<sup>148</sup> The *Rājatarāṅgini* I. 120 informs us that in former times there were only seven departments (*karmadhānās*), that later on they became 18 and that five more were added to these eighteen (IV. 142-143 and 512): viz. mahāpratihāra, mahāsāndhivigraha, mahāśvaśāla, mahābhāṇḍāgāra, mahāsādhambhāga (and so the heads were called 'adhigata-pañcamahāśabda' i. e. to whom five titles with 'mahā' in them were given).<sup>149</sup> The *Agnipurāṇa* 220 mentions several high functionaries like the senāpati, pratihāra, dūta and heads of departments. The *Śukranītisāra* (II. 69-70) enumerates ten principal high functionaries of the king (*prakṛtis*) viz. purodhas (purohita), pratinidhi, pradhāna (President of council), saciva (war minister), mantrin (Home minister), prādvivāka (minister of justice), paṇḍita (minister of ecclesiastical matters), sumantra (Finance minister), amātya (revenue minister) and dūta (minister of diplomatic relations) and remarks that others omitted purodhas and dūta from this list of ten and held that those eight should all receive the same pay (verses 71-72), while Śukra was of opinion that the ten high dignitaries should each receive in order one tenth more as pay than the succeeding one (v. 71), that the purohita was the most eminent of all, that among the rest each preceding was more eminent than each succeeding one (II. 74-77), that after these high dignitaries came the other officers (*adhikāriṅga*, II. 279), that then came the *darśaka* (secretary?), and *lekha* (clerk), then the menial servants who waited on the king and lastly the lowest were those who carried out dirty work. In II. 84-87 Śukra briefly brings out the special functions of the

148. उक्ते च । केनचित् निर्णयको राजभेदो वृत्तापिपे मन्त्री महत्तरो बलवत्तश्चकारो  
वर्णाच्चतुष्टयवर्गं दुरोदितोऽसाधो महामातृश्चेत्यष्टादश राज्ञी तीर्तानि भवन्ति । com. on  
यशस्तिलक I. p. 91: धर्मसमवायिनः कार्यसमवायिनश्च दुरुदास्तीर्यम् । नीतिशा. p. 29  
(अर्थसमुद्देश).

149. This is a meaning of *pañcamahāśabda* which is peculiar to the *Rājatarāṅgini*. Elsewhere that title generally means one before whom were beaten the five musical instruments. In the Talcher grant of Kolastambha in the 9th century the epithet 'samadhigata-pañcamahāśabda' is applied to a king (mahārājādhirāja) in E. I. vol. XII p. 157, while in an inscription from Yewar of about 1040 A. D. it is applied to a mahāmaṇḍalesvara (E. I. vol. XII. p. 269). In the Fimpari plates of Dhārāvāra Dhruvārāja dated date 607 the same title is applied to a minister described as महामन्त्रिविग्रहा-  
धिकृतसामन्त (E. I. vol. X, p. 89). Vide JEBRAS (New series) vol. 3  
pp. 233-245, VII. 487, VIII. 93 for discussion.



ministers from *pratinidhi* to *dūta*<sup>150</sup> and then in II. 88-105 at length. In I. 353-361 Śukra lays down how the king's public *darbar* should be arranged, viz. the king's throne should be in the centre of the western half of the hall on which the king should sit well-dressed, wearing his crown, armour and a drawn sword; his sons, grandsons, brother's and sister's sons should sit behind him, his daughter's sons should sit on his right and on his left should sit in order his uncles, chief agnates, members of the assembly, commanders; in front of the king to his right should be seated his maternal grandfather's relatives, the mantrins, and to the left his father-in-law, wife's brother, officers &c. The Śukranītisāra (I. 374-376) lays down certain very practical rules for the king: 'he should personally observe villages, towns and districts every year; he should see whether his subjects are kept contented or are harassed by his officers, he should not side with the officers (with the man on the spot) but rather should take the side of the subjects, he should remove an officer who is hateful to many (lit. a hundred) people and an *amātya* should be removed if he is found to commit several illegal acts, Śukra (in II. 107-113) further advises the change of portfolios among the ministers (e. g. *sumantra* should be appointed *amātya* or *vice versa*); he says that for each department three should be engaged, one the most clever being the head and two others being *darśakas* (secretaries) who should be changed every three, five, seven or ten years; one man should not be allowed to hold the same high office for a long time, since otherwise he becomes intoxicated with power;<sup>151</sup> servants should not do any business without a written order nor should a king order anything to be done except in writing (II. 290).

The words in Aśoka's Edict III 'pañcasu pañcasu vāsesu niyāta' probably refer to the practice of the transfer of high

150. कार्याकार्यपविज्ञाना स्तुतः प्रतिनिधिस्तु सः । सर्वदर्शी यथानस्तु सेनापितु सचिपस्तथा । मन्त्री तु नीतिकुशलः पण्डितो धर्मतत्त्वविद् । लोकशासनपज्ञस्तु यादृचिपाकः स्तुतः सदा । देशकालपविज्ञाना इदमात्र इति कल्पते । आचरणपपविज्ञाना सुमन्त्रः स च कीर्तितः । सुकनोति II. 34-36.

151. Compare what Kaupilya says 'कलं वि पितं विकरोति' (VII. 14 p. 305). That power corrupts is forcibly stated by Plato in his 'Laws' Book IV p. 485 (Random House ed.) 'Chronos knew that no human nature invested with supreme power is able to order human affairs and not overflow with insolence and wrong'.

officers every five years. The 6th caste mentioned by Megasthenes (Fragment 1 p. 41 and Fragment XXXIII p. 85 in McCrindle's 'Ancient India') was that of overseers who inquired into and superintended all that went on in India, and made reports to the king or, where there was no king, to the magistrate. Megasthenes probably confounded the ministers and *adhyakṣas* (who were often hereditary) with a caste. Vide also Fragment XXXIV pp. 86-88 about the officers of state and their duties. It is probably on account of some such rule as is stated in Śukra about frequent change of portfolios that in the inscriptions high functionaries have epithets prefixed to them which indicate their connection with several portfolios e. g. in the Banskhera plate of Emperor Harṣa (E. I. vol. IV p. 208 at p. 211) Skandagupta (who is probably the same as the Skandagupta mentioned by Bāṇa in the Harṣacarita VI as commander of the elephant arm) was the *dūta* of the grant and is described as 'mahāpramātāra-mahāsāmanta'; in the Allahabad stone pillar Ins. of Emperor Samudragupta (Gupta Inscriptions p. 10 and p. 15 n. 4), Harisena is described as 'Sādhivigrahika' (minister for peace and war), 'Kumārāmātya' (the minister of the Yuvarāja?) and Mahā-dandanāyaka<sup>152</sup> (commander of an army); Pṛthvisena (a brāhmaṇa) is described as mantrin, kumārāmātya and then mahābala-dhikṛta (in E. I. vol. X p. 72, of Gupta Samvat 117). In theory and practice the king was to issue orders in the presence or under the advice of his principal ministers. We read in the grant of Rājārāja I of the Eastern Cālukya dynasty that he issued his command in the presence of the mantrin, purohita, senāpati, yuvarāja, dauvārika and pradhāna (E. I. vol. IV. p. 300 at p. 302). Śukra (II. 362-370) describes the procedure followed in issuing orders about State business. First the mantrin, prādvivāka (Chief Judge), paṇḍita (head of ecclesiastical department), and dūta should write out the business relating to their departments, then the amātya should write thereon (*sādhulikhnamasti*, the writing is good), sumantra adds '*samyagvicāritam*' (it is well considered), the pradhāna writes '*satyaṁ yathārtham*' (it is the truth, it is as the business requires), pratidinī should write '*āṅgikartum योग्याṁ*' (it is proper to accept this), the yuvarāja should write '*āṅgikartavyam*' (it should be accepted), the purohita should write '*lekhyam evā-*

152. 'Mahādandanāyaka' may mean 'the chief minister' as Manu VII. 65 states 'on the amātya depends the control (of the government) and discipline (among subjects) depends on control (danda).'



bhīnatam' (this writing is approved by me); all then should make their seals after their remarks and then the king should write 'aṅgīkṛtam'<sup>152</sup> (it is accepted) and affix his seal.

The Rājatarāṅgiṇī shows that persons often rose to ministerial positions from low birth e. g. (V. 73) it states that an engineer of Avantivarman was a foundling, (VII. 207) a watchman became chief minister.

It is necessary to say a few words about some of the great officers of State. First comes the Yuvarāja. Kauṭilya devotes one chapter (I. 17) to taking care of the prince. The subjects of the prince's education, his association with state business, treatment of princes, good or bad, the coronation of a yuvarāja have already been dealt with (pp. 49, 83 &c.). The younger brother or eldest son was made yuvarāja (Crown Prince) during the reigning king's life (Ayodhyā, chap. 3-6, Kam. VII. 6, Śukra II. 14-16). Rāma on his coronation as king made Bharata the Crown Prince when Lakṣmana refused to be so (Yuddha 131-93). The yuvarāja and princes were often sent as governors of different parts of the realm. The Divyāvadāna (XXVI. p. 371) states that Aśoka was sent by his father Bindusāra to Takṣaśīlā to pacify popular disturbances and Emperor Aśoka himself is said to have sent his son Kunāla from Pāṭaliputra to the same town to pacify the citizens that had been offended by the arrogance of the *amātyas* (*ibid.*, pp. 407-8). Khāravela in the Hathigumphā Ins. (E. I. vol. XX at pp. 79, 86) was a yuvarāja for nine years from his 16th to his 24th year. From the Mālavikāgnimitra we learn that while Puṣyamitra was virtual emperor of Bharatavarṣa his son Agnimitra was ruling at Vidiśā and had the authority to divide the kingdom of Berar between two brothers, Yajñasena and Mādhavasena. The yuvarāja is not generally enumerated in the lists of mantrins, but he is one of the 18 ūrthas and from Śukra (above p. 115) it appears that he had a seal and important matters passed through his hands along with those of the ministers. According<sup>154</sup> to

153. Compare the word 'dṛṣṭam' occurring at the beginning of Chamuk and Sivasī grants of the Vākāṭaka emperor Pravarasena II and the same word in the plate of the Pāṭava king Śīvasatavahman (in E. I. vol. I at p. 9). In most plates of the Vākāṭakas the word 'dṛṣṭam' occurs at the beginning; vide E. I. vol. 22 p. 167.

154. जीवमान् स्वामिता हुवे न वेवाप्यखिला जचिन् । स्वभावसद्वृत्ते परमान्महानर्धमादाका ॥ विष्णुधरेणो दत्ता स्वहुवे स्वाधिकारता । स्वाहुवे स्वल्पज्ञेन तु सत्यवे स्वाभ्यमादिशेत् ॥ शुक्नीति V. 17-18.

Śukra (II. 12) the yuvarāja and the group of amātyas are the two arms or eyes of the king, but Śukra V. 17 warns the king against transferring all power to the Crown Prince except when the king is about to die. The Matsyapurāṇa 220. 7 quoted in the Budhabhūṣana (p. 33) prescribes that the king should entrust to the well-disciplined prince at first unimportant offices and then gradually important ones.<sup>155</sup> If a prince was ill-behaved he was not to be abandoned as he would go over to the enemies and harm the king, but he should be kept confined in a guarded place (Kām. VII. 6, Budhabhūṣana pp. 33, 35, verses 77, 93). As regards his emoluments he was placed on the same footing as the mantriya, purohita, senāpati, the queen, the king's mother (Kaut. V. 3). What office is meant by the Kumārāmātya in some of the Inscriptions (e.g. Gupta Ins. pp. 10, 50, E. I. vol. X p. 72, E. I. vol. XI. p. 83) is not clear. It does not probably mean 'a royal prince who was also an amātya', but rather some minister attached to the yuvarāja, as contradistinguished from rājāmātya (which office occurs in Gupta Inscriptions, p. 218). It appears that in ancient times provincial governors could be total strangers to the royal family. From Rudradāman's Junāgadh Ins. we learn that the governor of Surāstra under Candragupta Maurya was a vaiśya called Puṣyagupta and under Aśoka a Yavana noble or king called Tusāpa<sup>156a</sup> (E. I. VIII p. 36 at p. 43).

Next comes the *purohita*. In H. Dh. vol. II pp. 40 and 363 it has been already shown how purohitas existed from the most ancient period of the Rgveda, how the purohita was thought to be half the soul of the king and how the co-operation of the spiritual teacher and the secular head (the king) was deemed absolutely necessary for the prosperity of the kingdom, how Gautama (XI. 12-14) and Āp. Dh. S. II. 5, 10, 16 prescribed the qualities of the purohita. Our authorities show that the purohita was not a mere priest. The Ait. Br. (40. 2) calls the purohita 'rāstragopa' (the saviour of the kingdom). The Śukranīti also,

155. अधिकारीषु सर्वेषु विनीतं विनियोजयेत् । आद्यौ स्वल्पे ततः पश्चात्कृतेषां महत्स्वभिः । मत्स्य 220. 7, दुप. p. 33

156a. It is strange that Dr. Beni Prasad in 'The State in ancient India' (p. 189) remarks "the former governor is designated *adhyakṣya* while the latter is called *adhyakṣhāya*". 'Adhyakṣhāya' in Rudradāman's Ins. is only a gerund of 'sthā' with 'adhi' and means 'having ruled over'. राष्ट्रिय is formed from राष्ट्र according to राजाभाषणम् यस्मै (Pāṇ. IV. 2. 93) and means 'one ruling over a province, a Provincial Governor'. In drama राष्ट्रिय means 'king's brother-in-law'. Kāraṇvāmi says "नाट्यादुपपन्नं राष्ट्रियं राष्ट्रियः".



though a very late work, similarly describes the purohita (II. 74) as 'rājarastrabhṛt' (the supporter of the king and the kingdom). In the Rgveda III. 53. 12 we find the idea that the hymns and the spiritual power of the purohita Viśvāmitra protected the Bharata clan.<sup>156</sup> He made the king ready for battle and accompanied him in battle murmuring 'where the arrows fly &c'. (Rg. VI. 75. 17) while the fight went on (vide Āśv. Gr. III. 12. 19 quoted below n. 308). The Viṣṇudharmasūtra III. 70, Yāj. I. 313, Kām. IV. 32 require that the purohita was to be well versed<sup>157</sup> in the vedas, itihāsa, dharmasāstra or danda-nīti, in astrology and portents, in rites of propitiation contained in the Atharvaveda, of high family, endowed with all *vidyās* and good acts as stated in the śāstras and with austerities. Kaut- (I. 9) states almost the same qualifications for the purohita, requires the king to honour his advice as a pupil honours his teacher or a son his father or a servant his master and says that royal power advanced by brāhmanas, enforced as with a spell by the consultations of mantrins and endowed as with a weapon by the observance of śāstric rules becomes invincible and secures success. Vide Ādī 170. 74-75, 174. 14-15, Śānti. 72. 2-18 and chap. 73, Rājanītiprakāśa pp. 59-61 and 136-137, Rājadharmakaustubha pp. 255-257 for qualifications expected in the purohita. Kauṭīya (X. 3) states that while a battle is going on the (chief) minister and purohita should urge on and encourage the soldiers by exhorting them with verses from the Veda and classical Sanskrit, promising great rewards in the next world for those who fall in battle. The Śukranītisāra (II. 78-80) requires in the purohita among other qualities the study of dhanurveda, proficiency in arms and in formations of armies for battle and possession of so much religious merit as to be able to pronounce an effective curse. A purohita was to be distinguished from a *priest* (a sacrificial priest) as Manu VII. 78 and Yāj. I. 314 show. Vide Mānasollāsa II. 2. 60 (p. 34), Rājanītiratnākara pp. 16-17, Viṣṇudharmottara II. 5, Agnī. 239. 16-17 for further passages on purohita. Some authorities include

156. विश्वामित्रस्य रक्षति जगद्देवं भार्यं जनम् । अ. III. 33. 12.

157. वेदेषु शास्त्रेषु यमशास्त्रार्थकुसले कुलीनमायुर्ज्ञे तपस्विने पुरोहिते च वरयेत् । विष्णु-धर्मसूत्र III. 70 : पुरोहितं यकुर्वीत । देवस्य मुदितोदितम् । दण्डनीत्यां च कुसलमपवाङ्मिरसे तथा ॥ पाञ्च. I. 313 : पुरोहितमुदितोदितकुलमीलं यद्वहे देवे देवे निमित्ते दण्डनीत्यां चाभिषिर्नातमापवां देवमातृषाणामनर्घमिषपायेष्व यतिकर्तारं कुर्वीत । तमाचार्यं सिष्यः पितरं पुत्रो सूरयः स्वामिनमिव चातुरवेत । ... जाह्नवे नैषिणं स्रवं मण्डिमन्त्राभिमन्त्रितम् । जपस्य जितमरवर्तं शास्त्राभ्युपनशस्त्रितम् ॥ कौटिल्य I. 9 : राजा पुरोहितं कुर्वाणुदितं जाह्नवं हितम् । कुताभ्युपनशस्त्रमदुर्वं सत्यवादिनम् ॥ कात्या. q. in स. वि. p. 20.

the purohita among amātyas or mantrins (e. g. Viṣṇaśvara on Yaj. I 313, Śukra II. 69-70), while others like Yaj. I 312 regard him as distinct from mantrins. The purohita was often hereditary. Acc. to Kautilya quoted above he was to employ means declared in the Atharvaveda to remove calamities, divine and human. The great divine calamities acc. to Kautilya IV. 3 are fire, flood, disease, famine, rats, wild elephants, snakes and evil spirits.<sup>155</sup> According to Manu VII. 78 the purohita was concerned with the religious rites laid down in the śrauta and grhya sūtras and Āp. II. 5. 10. 14-17 show that the purohita had complete jurisdiction in matters of penance for offences. Vas. (19. 40-42) provides that if the king lets off an offender deserving to be punished the king had to fast for a day and the purohita for three days and to perform the heavy penance of Kṛcchra if the king punished the innocent. According to most authorities he played a role that was pre-eminently religious. He is not mentioned among the 10 limbs of the sabha in the administration of justice. Kat. 24 (quoted in S. V. p. 20) does not require him to be an expert in arthasāstra, though Kat. 56 quoted by the Mit. on Yaj. II. 3 and Sm. C. (II p. 14) say that the king should enter the Hall of Justice with learned brāhmanas, the ministers, the chief justice, the purohita &c. Yaj. I 312 and the Mit. on Yaj. I 312-313 on the other hand prescribe that even after consulting all mantrins, the king was finally to consult the purohita in all secular and religious matters. The Nītivākyaṃṛta (purohitāsamuddeśa) p. 160 states that the divine calamities are: shower of fire (fall of lightning?), excessive rainfall, epidemics, famine, damage or disease of crops, swarms of locusts and other vermin, diseases, goblins and female evil spirits, snakes, wild elephants, rats. The purohita is required to know ritual of five kinds,<sup>156</sup> viz. that dealing with the propitiation of Nakṣatras, that of śrauta sacrifices, that of the *samhitās* (of Tantra worship), that of Atharvasūtras and that of

155. वैशम्पयी महाभारत-अग्निवदके व्याधिर्मुषिर्गन्धर्वश्चैव गालः सर्पा रक्षसीति । तेभ्यो जलपद् रक्षेत् । अर्थशास्त्र IV. 3 : अमर्त्योऽप्येतिवर्षमतिवर्षं मरुतो (मरुतो ?) दुर्मर्षं मरुतोपशतो जलमर्षो व्याधिर्भूतदिमाचक्ष्माकिन्मर्षो गालमुषकाधोपायदः । नीतिशा. p. 160.

156. पञ्चकल्पविधानम् । वरपेषं सुवर्णमम् । अक्षयकल्पो वेदान्तस्तोत्रः संतिनामिति । अतुषोऽग्निरा कल्पः शान्तिहस्तस्तु पञ्चमः । पञ्चकल्पविधानज्ञमाचार्यं प्राप्य पूयते । सर्वोपायवशान्तात्मा शुभं किं बहुधां विरम्य \* निम्बुवर्मनिर II. 3. 3-3 quoted in राजनीतिकौ. p. 356. शिरस् here seems to mean अवशिरस् which is an Upaniṣad mentioned in Gaut. 19.12, Vas. 23. 14, Viśvadharmasūtra 56. 22 among the holy Vedic texts that purify a person of sins. It begins with देवा ह वै स्वर्गं लोकमममन्ते देवा इदमष्टव्यान्को भवामिति । Vide Muir's Sanskrit Texts vol. IV. p. 356 ff for text (portion) and translation.



śāntis (such as grahaśānti &c.). Calamities, according to Kām. XIII. 20-21, are of two sorts, divine (daiva) and human: there are five kinds of the first viz. fire, flood, disease, famine and epidemic, all of which can be met by human effort and by propitiatory rites, while human calamities should be withstood by constant effort and by proper lines of policy. The same verses are Agnipurāṇa 24L 14-16.

Acc. to Kauṭilya (V. 3) 48000 paṇas were the salary of the (royal) sacrificial priest, ācārya (teacher), mantrin, purohita, commander-in-chief, crown prince, the king's mother, the queens and he holds that "with that amount of maintenance they would not yield to temptation or revolt (against the king)".<sup>160</sup> The amātyas, the chief judge and even the purohita could be punished by the king, acc. to Manu, if any of them went wrong (VIII. 335 and IX. 234) and Kauṭ. (IX. 3) prescribes that when the purohita is guilty even of a great offence, the remedy is to imprison him or banish him. Some great ministers, though not exactly purohitas of the king, were learned brāhmaṇas and led simple lives such as Cāṇakya and Mādhava. There is divergence of views about the salaries set out in the Arthaśāstra (V. 3). Jayaswal (in 'Hindu Polity' part II p. 136) holds that the salaries were yearly and the paṇas in which they were paid were silver ones. Prof. Dikshitar (in 'Mauryan Polity' p. 151) holds that the salaries were monthly. Confusion is caused by the fact that there were paṇas of copper, silver and gold. Vide Rājānitiprakāśa p. 294. The Rājatarāṅgiṇī VII. 950 speaks of *dinnāras* of gold, silver and copper. Rao Bahadur K. V. Rangaswami Aiyangar holds that the salaries (in the Arthaśāstra) were monthly and in golden paṇas (in 'Ancient Indian Polity' pp. 44-45). Therefore this matter must be investigated. Manu (VIII. 13) promises that those names of copper, silver and gold coins which are well-known among the people (of its day) for purposes of trade will be described by him. Acc. to Manu VIII. 134 and 136, Viṣṇu Dh. 8. IV. 6-10, and Yaj. I. 363-365 five kṛṣṇalas are equal to a māsa, 16 māsas are equal to a suvarṇa, 4 suvarṇas (or five acc. to some) are equal to a pala, a karsa is equal to  $\frac{1}{4}$  of a pala and a piece of copper one-fourth of a pala in weight is called a paṇa, which is the same as karsapaṇa<sup>161</sup> (equal to 80 *rahitās* or

160. अन्विताचार्यमन्त्रिपुरोहितममन्त्रिपुराजराजमन्त्रिपुराजमन्त्रिपुरोष्ठचरवारिप्रसाहनाः । एतावता भरणेनानास्वाद्यन्मकापिके चैवा भवति । कौटिल्य V. 3.

161. कर्षणमितस्तादृशिकारः पञ्चसंज्ञो भवति कार्षापणसंज्ञकश्च कार्षापणस्तु विज्ञेयस्तद्विक्रः कार्षिकः पणः इति मनुवचनात् । मितः on वा. 4. 365; पञ्चाकार्षापणसंज्ञो पलचतुष्टयसंज्ञकश्च ताम्रद्वयस्य नामधेयम् । तद्वित्तः (II. p. 99); धान्यमात्रा वृद्धा सुवर्णमात्रका पञ्च वा सुवर्णः । नै वीरुद्ध सुवर्णः कर्षा ता । चतुःकर्ष पलम् । अथशास्त्र II. 19.

guñja berries). A pala was equal to 320 raktikās. Kaut. II. 19 says practically the same thing. In Kaut. V. 3 the salaries range from 48000 to 60 paṇas from the highest functionaries to the lowest servants. They must all be taken to be for the same period in every case and in the same metal, since Kaut. expressly states no different periods and no difference in metal. Ordinarily the words pana and karsāpana (as stated by Manu VIII. 136 and the Mit. on Yāj. I. 365 and the Śukranīti IV. 1. 116) refer to copper pieces (used as coins) and bearing a stamp. Another table given by Manu VIII. 135-136, Visnu Dh. S. VI. 11-12, Yāj. I. 364 is: 2 raktikās<sup>108</sup> or kṛṣṇalas = one (silver) māsa, 16 māsas = one

162. A raktikā was found by General Cunningham after many experiments to weigh on an average 1.8 grains (vide his 'Coins of Ancient India' pp. 45-46 and also Rapson's 'Coins' pp. 2-3). So that a silver dharaṇa or purāṇa (of 32 raktikās) should weigh about 57.6 grains and a copper pana (of 80 raktikās) should weigh 144 grains. It appears that the weights of Indian coins in different parts and at different times varied a good deal. Cunningham ('Coins of Ancient India' p. 5) states that gold was cheap in India, being as one to eight rates of silver. But in medieval times i. e. about 1300 A. D. (vide Śakra IV. 2. 92-93) gold was 16 times the price of the same weight of silver, which again was 80 times of the price of the same weight of copper. Though, as stated in note 161 above, a copper pana was usually equal to eighty raktikās, a copper pana of 100 raktikās (i. e. of 20 māsas) was known. Nār. (pariśeṣa verse 58) speaks of māsa as the 20th part of the karsāpana and the Mit. on Yāj. I. 365 and Vy. Nirṇaya p. 207 quote a verse (attributed to Uśanas by Haradatta and Maskarin on Gaot. XII. 19) that a māsa is a twentieth part of pana (मासो विंशतिमो षाणः पणस्य विंशतिर्भागः). The Agnipurāṇa (227. 3) appears to have known a pana of 120 kṛṣṇalas (कुण्डलानां तथा पणस्य कर्षणं शतं कीर्तितम्). The verses in Nār. (pariśeṣa 58-60) are ascribed to Kāt. by the Sm. C. II. p. 99 and it is stated by both that those terms are in vogue in Pañcanada (Punjab). When the pana of copper was equal to 20 māsas (and 100 guñjas), the copper coin would have been almost of the weight of the modern copper half anna coin. The table given by Nār. (pariśeṣa 58-60) is: 4 kākīṇis = māsa, 20 māsas = karsāpana (which is the same as Aṇḍikā), 4 karsāpanas = dhānaka, 12 dhānaks = sivaraka (also called dīnāra). The table given by Br. (as quoted in Sm. C. II p. 99 and V. R. p. 667) is the same. Br. as quoted by Aparārka p. 632 and V. R. p. 111 employs the word 'nāṇaka' for coin, which word also occurs in the Mṛcchakaṭīka and in Yāj. II. 240-241. The Amarakośa states that naka and dīnāra are synonyms and also gives other meanings of naka. Śabara on Jai. IV. 3.39 gives the striking example 'no one would spend a karsāpana for finding out a kākīṇi that he had lost'. The Arthamāstra II. 12 p. 84 states that the superintendent of the mint should manufacture copper panas, half panas, kākīṇis and half kākīṇis. The Visnu Dh. S. V. 96 refers to a golden

(Continued on the next page)



silver purāṇa or dharāṇa; 10 dharāṇas = one (silver) śatamāna. This table was used for silver coins. Thus a dharāṇa would be 1/10th of a pala as stated in the Bṛhatsaṃhitā (10. 13 palada-

(Continued from last page)

māṇaka. Under the Guptas golden coins are mentioned as dināras; vide 'Gupta-Inscriptions' p. 29 at p. 31 where there is a gift of 25 dināras in the Gupta year 93 and pp. 38, 41, 261 (where it is stated that one bhikṣu was to be fed every day throughout the year from the permanent endowment of 12 dināras). From the Balgram plate dated Gupta *samvat* 128 it appears that one dināra was equal to 16 rūpakas (silver coins) in E. I. vol. XXI. p. 26. A Mathurā Ins. of the 28th year of Huvīśka speaks of the deposit of 550 purāṇas (E. I. vol. XXI. p. 55 at 61). Bhāskaraśāstrī (who was born in śaka 1036 and wrote his Siddhāntaśiromani in 1072 śaka i. e. 1150 A. D.) gives the following table (in Līlāvati I. 2-4): 20 varāṇakas = kākṣi, 4 kākṣis = pana, 16 panas = dramma, 16 drammās = niṣka; 2 yavas = guṇjā, 3 guṇjās = valla (modern Marathi *vāl*), 8 vallas = dharāṇa, 2 dharāṇas = gadyāṇaka, 5 guṇjās = māṣa, 16 māṣas = karsa, 4 karsas = pala and a karsa of gold is called Suvārṇa. It will be seen that Nār. and Līlāvati differ as to कक्षिकी. Gadyāṇakas of gold are referred to in the Pajjadakal pillar Ins. of Kirtivarman I (734 A. D.), where it is stated that a field of 30 nirvartanaas was purchased for thirty gadyāṇakas of gold (E. I. vol. III, pp. 6-7). From a verse of the Caturvīṃśatimata quoted by the Mit. on Yā. III. 258 it appears that gadyāṇaka was also a silver coin. From an inscription of Vikramāditya V near Gadag dated śaka 934 it appears that fines for offences were levied in gadyāṇakas (E. I. vol. XX p. 64). The following works may be consulted for further information on Indian coins viz. Cunningham's 'Coins of Ancient India' (1894), Rapson's 'Indian coins' (1897) in the *Grundriss*, C. J. Brown's 'Coins of India' (in 'the Heritage of India' series, 1922). The Dharmadvaitanirṇaya (pp. 137-139) and the Vaijayanti on Viṇṇa Dh. S. IV. 9 may be consulted for efforts to reconcile the various statements about Suvārṇa, Niṣka &c. For an informing paper on the most ancient *Denarii*, vide Proceedings of the British Academy vol. XVIII pp. 211-266 where it is established that the earliest *denarius* period begins about 187 B. C. Therefore Jolly's assumption (in Recht und Sitte p. 23 followed by Winternitz in 'History of Indian Literature' vol. II. p. 216. n. 4 that all Indian works in which the word dināra occurs cannot have been composed before 2nd century A. D.) is unwarranted. Prof. Keith (JRAS for 1915 p. 304) does not accept Jolly's assumption. The dināra was variously defined. According to Viṇṇugupta quoted in Hemādri's Vṛatakhanda, a rūpaka is 1/8th of suvarṇa and a dināra was equal to 28 rūpakas, while acc. to Nār. and Kūṭ. सुवर्ण and क्षीनार were synonyms. The Dharmadvaitanirṇaya says that a kākṣāṇaka (of silver it seems) was equal to eight or ten dhabbukas. One of the verses of the Jñāneśvari (composed in 1200 A. D.) that speaks of gold as द्यौरे (15 times in price of the same weight of silver) may be cited here 'ये मांशर जरी द्यौरे । त्रीं राजपदींची अक्षरे । तारे (v. 1. साहे) तेचि सरे । विषयसरे ।' chap. 17 verse 322 (Bhide's and Madgavkar's editions).

śabbhāgo dharanam). Nārada (pariśiṣṭa 57) expressly states that a silver kārsāpāna is in vogue in the south i. e. a silver pana or kārsāpāna was not universal.<sup>162</sup> A golden suvarṇa also comprised 80 guṇjās, while the standard silver pana was of 32. Rhys Davids (in 'Buddhist India' p. 100) states that about the time of Buddha's birth transactions were carried on in terms of the *kaḥāpana*, a square copper coin weighing about 144 grains and guaranteed as to weight and fineness by punch marks made by private individuals, that there were half and quarter kaḥāpanas also, that a kaḥāpana would be now worth about  $\frac{1}{4}$ ths of a penny, though its purchasing power was then equal to about one shilling of the present day. Therefore it is proper to understand that a pana or kārsāpāna, when the word is used without any qualification, was meant to be one of copper and that *prima facie* the salaries in Kautīliya were meant to be in copper panas. This conclusion can be supported by various considerations. Manu VII. 126 prescribes that the wages for the lowest menial servant (such as one who sweeps the house or brings water) is one pana a day and of a superior menial servant 6 panas a day and that the former was to get in addition one pair of garments every six months and every month a dropa of corn (which would be equal to 1024 *muṣṭis* according to the Mit. on Yaj. III. 274). Whatever ages may be assigned to the Arthaśāstra and the present Manusmṛiti the two works cannot be separated from each other, if at all, by more than a century or two. Therefore the economic conditions of the one may be held to have not differed much from those to which the other refers. It is impossible to hold that the lowest menial servant got one gold pana a day besides over 30 *muṣṭis* of corn every day (1024 in a month). If that were so, the lowest menial servants of Kautīliya's days would have to be supposed to be a hundred times better off than their *confreres* in big cities like Bombay towards the end of the 19th century (when menial servants got from five to ten rupees a month without any allowance of grain). Therefore the pana in Kautīliya V. 3 is not of gold. Kautīliya (in V. 3) says that a king who has a depleted treasury may make payment of salary by giving forest produce, cattle or fields along with small quantities of cash, that if he has undertaken to colonize a waste tract he may make payment of salary in cash only and not by bestowing a village. In connection

162. कार्षापणो दक्षिणस्यां दिशि रौप्यं वर्तते । नारदः (परिशिष्ट 57) : दक्षिणदिशो पीडयेत् द्रुमो मध्यमः । दक्षिणे हि द्विगुणवत्तम आ पीडयन्नस्तदिति । कौटिल्य V. 3.



with this he says that 60 *papas* are to be the equivalent of one *ādhaka* of corn (*eastivetanasyādhakam kṛtvā hiraṇyānūrūpam bhaktam kuryāt*).<sup>164</sup> An *ādhaka*<sup>165</sup> came to only 256 *muṣṭis* (handfuls) of corn and even in famine times one *ādhaka* could not have cost 60 silver *papas*, much less golden ones. In V. 3 Kautilya declares that an ordinary *dūta* should get ten *papas* for a journey of one *yojana* and twice the wages for each *yojana* up to one hundred. A *yojana* acc. to Kant. himself (II. 20) is equal to 8000 *dhanus* (acc. to another reading 4000 *dhanus*), a *dhanus* being equal to four *aratnis* (each *aratni* being 24 *angulas*). So taking the highest figure a *yojana* was at the

164. The word *hiraṇya* has two senses 'gold' and 'money or 'cash' whether in gold, silver or copper (as said by Amara who gives 'dravīṣa' as a synonym). When Kautilya says that the king may pay 'hiraṇya' and not 'grāma' he means only cash payment and not necessarily only gold: vide the copperplate grant of Śilāditya VII in Gupta Inscriptions p. 179 at p. 129 where the grant of a village is said to be 'adhūnyahiraṇyādēyah'. Here *dhānya* (payment of tax in kind) is contradistinguished from payment in *hiraṇya* i. e. in cash (either gold, silver or copper). When Patañjali states that the Mauryas being greedy of 'hiraṇya' founded or manufactured images (*Mahābhāṣya* vol. II. p. 429 on Pāṇ. V. 3. 99 quoted in II. Dh. vol. II p. 710 n. 1696) what is meant is that they wanted cash and not merely gold.

165. The measures of capacity such as आदक, पय occur in the Mātura Ins. of Huvishka (E. I. XXI, p. 55 at p. 61). According to Parāśara (VI. 70) two *prasthas* are equal to an *ādhaka* and 32 *prasthas* are equal to a *droṇa*. The Mit. on Yā. III. 275 quotes a verse to this effect: 8 *muṣṭis* = one *kāṣṭhi* or *kāṣṭhi* (acc. to some), 8 *kāṣṭhi* = *pushala*, 4 *pushalas* = *ādhaka*; 4 *ādhakas* = *droṇa* and 16 *droṇas* = *khāri*. Aparāṭha (pp. 303 and 346) quotes two verses (which the Par. M. II. 1, p. 141 ascribes to the Bhaviṣya-purāṇa) which say: 2 *palas* = *prasthi*, 2 *prasthis* = *kudava*, 4 *kudavas* = *prastha*, 4 *prasthas* = *ādhaka*, 4 *ādhakas* = *droṇa*, 2 *droṇas* = *kumbha*. The Danda-viveka p. 135 refers to this, adds that some held the *kumbha* to be equal to 20 *droṇas* (Kant. II. 20 holds *kumbha* to be equal to 20 *droṇas*) and quotes the following verse from चण्डेश्वर 'कुडवादा वेदमुनाः पयसाद्वेदोपमानकाः सार्वः । कुम्भी विंशतिवार्या द्रुहो लोके वपामनाः' &c. The word *droṇa* occurs even in the Rgvēda in the sense of a wooden trough used for holding water or soma juice. Vide Rg. VI. 2.8, VI. 37.2, VI. 44.20, IX. 23.4 etc. In Rg. IV. 32. 17 the sage prays Indra to grant a hundred *khāris* of soma. The words *ādhaka* and *droṇa* occur in the ardharcādi group (Pāṇ. II. 4. 31). *Khāri* in Pāṇ. V. 1. 33 and V. 4. 101. The Par. M. II. 1. 141 says on this difference about *kumbha* 'द्वेसमेदेन शास्त्रद्वयेन व्यवधानवत्तत्' Kauy. (II. 19 p. 104) himself tells us that the measure *droṇa* was of four varieties, 162½ *palas*, 175, 187½ or 200 *palas* according as it was used for measurement in the harem, or for servants or for ordinary dealings or for royal income.

most about 9 or 10 miles (or only  $4\frac{1}{2}$  or five miles according to the other reading). To hold that 10 silver panas were allowed to an ordinary dūta for going even ten miles (which he could cover in half a day or less) would be too much. Hence also the panas in Kaut. V. 3 are only copper ones. When once it is settled that the panas are of copper, it easily follows that the salaries in panas were monthly. Artisans and craftsmen were, acc. to Kaut., to get 120 panas. If this were yearly, they would get only 10 panas a month, while, according to Manu quoted above, even the lowest menial was to get a pana a day. Therefore 120 panas (of copper) were the monthly salary of an artisan. A monthly salary is more natural and practical than a yearly one. Other ancient writers like Śaṅkha-Likhita (in *Rājanītiprakāśa* p. 253) contemplate a monthly salary for soldiers (viz. two suvarṇas a month).<sup>166</sup> From the Naalk Inscription No. 12 (E. I. Vol. VIII.

166. शङ्खलिखितौ । बाह्यपयोधारी सततमन्वीक्षणं प्रतिमासं द्विसौवर्णिकी वृत्तिः पाण्यारसं स्वरूपं चातुर्मास्यं वा । स्वयंसेवितु दानमनुक्रीतो निवृत्तिश्चतुर्पदानं कुलचारित्र्यशील-निष्ठादशमनुष्याधिकेषु समानं यजुर्जीत । राजधर्मकाण्ड p. 58, राजनीतियुक्ताह p. 232. राजधर्मकाण्ड explains राजकार्येण कृतेषु योगेषु तदुपादिषो दानं दद्यात् च राजा विधा-तव्या । यन्निजेषु तु योगेषु दानमनुमादधिकमपि यथादि देवमित्रार्थः. This provides for pension to the dependents when the soldier dies on duty, special bonuses or favours for special valour, work or worth.

A few words may be said about words like suvarṇa, śatamāna, niska &c. The word *kṛpāla* occurs in the Tai. S. II. 3. 2 1. *Hiranyakāra* (goldsmith) is found in Vāj. S. 30. 17. In Rg. I. 126. 2 gifts of a hundred niskas and horses are mentioned and in Rg. IV. 37. 4 the Rbhus are address- ed as wearing 'good niskas'. In Atharva V. 18. 3 'niska' occurs and in the Ait. Br. (39. 8) damasks who are *niskakanyhaḥ* (whose necks are adorned with necklaces of niskas) are among the gifts. So 'niska' was probably a gold piece used as a coin or an ornament or a thin plate of gold like a modern *putli*, several of which are even now worn by women in the form of a necklace. In Rg. II. 33. 10 Rudra is said to wear 'vīśvarūpa-niska' which is probably an allusion to golden pieces stamped with various figures. In Rg. VI. 47. 23 the sage says that he received ten 'hiranyapīṇḍas' (golden pieces) from Divodāsa. In Rg. VIII. 78. 2 a prayer is offered to Indra for the bestowal of golden 'mana', which may be the precursor of 'Śatamāna'. This last occurs in the Tai. S. VI. 6. 10. 2. Pāṇ. (V. 1. 27, 29, 30) respective- ly mentions śatamāna (what is bought for a śatamāna is called śatamāna), kārāṇapaṇa, niska and V. I. 34 refers to pana, pāda and māna. Patañjali (Mahābhāṣya vol. III. p. 369 on Pāṇ. VIII. 1. 12) gives the instance 'from this kārāṇapaṇa give one māna to each of these two persons who are here'. The sūtra of Pāṇini V. 2. 120 (rūpād-āhataprasastayor-yap) conveys that

(Continued on next page)



p. 82) we learn that in the early centuries of the Christian era 35 *karṣāpanas* were equal to one *suvarṇa*.

Hopkins in 'Position of the ruling caste' J. A. O. S. vol. XIII pp. 151-162 traces how the influence of the *purohita* grew. One cannot accept his views about there being three layers in the *Mahābhārata* and the conclusions from such dealing with the text that he draws, which are rather subjective. Gradually the importance of the *purohita* waned. As the *Śukranīṣāra* cited above (n. 150) shows, long before that work he came to be omitted by several writers from the council of ministers and was supplanted by the *Pandita*. The same functions came to be exercised by an officer called *dharmādhyakṣa* or *dharmādhikaraṇika* in Bengal and other countries. The *Maheśyapurāṇa* (215.24) states the qualifications of a *dharmādhyakṣin*.<sup>167</sup> Vide E. I. vol. 14 p. 156 at p. 160 of the *Nalhati* grant of Ballālasena, where we have both *purohita* and *mahādharma-dhyakṣa* mentioned among the great functionaries of State and the Benares copper-plate of the Cedi king *Karnadeva* in 1042 A. D. in E. I. vol. II p. 309 where we have *mahādharma-dhikaraṇika* but no *purohita*. Besides another officer called *sāmvatsara* (astrologer) gradually took over some of the functions of the *purohita*. The *Viṣṇudharmasūtra* III. 75 (*rājā ca sarvakūṛyṣu sāmvaśarūdhīnaḥ syāt*) requires the king to depend on the *sāmvatsara* in all matters. The *Bṛhat-saṃhitā* (2.9) states that a king without a *sāmvatsara* mistakes his path like a blind man. *Kām.* 4.33 and *Viṣṇudharmottara* II. 4. 5-16 recommend reliance on him. *Kauṭilya*<sup>167a</sup> IX. 4 was himself against too much reliance on astrology, while *Yāj.* I. 307 holds that the rise and fall of kings depend on the (aspects or influence of) planets.

(Continued from last page)

*Pāṇini* knew metal pieces that were well beaten and trimmed into good-looking coins. The *Vārtika* '*Kākiṇyāścopasāṅkhyānam*' (on *Pāṇini* V. 1. 33) establishes that *kākiṇ* was used in those days as a medium of purchasing goods. The *Kaśikā* gives '*rūpyo dīnāraḥ*' as an example: निचयितकानाञ्चनदिना इतिनादिपु स्वं यदुत्पद्यते तदाहृतमित्युच्यते । अहृतं रूपमस्य रूपो द्दीनारः । रूपं काशीपदम् । काशिका.

167. समः कर्षो च मित्रे च धर्मकाखविशारदाः । तिमिरुखः कुलीनश्च धर्माधिकारिणी मनेषु ॥ मत्स्यपुराण 215. 24 and बुध. p. 48 verse 216.

167a. नक्षत्रमतिबुधमस्तं बाह्यमर्थोक्तिर्वर्जिते । अर्थो ह्यर्थस्य नक्षत्रं किं करिष्यन्ति तारकाः ॥ अर्थशास्त्र IX. 4 (last verse but one)

*Senāpati*: The qualities of a commander-in-chief are stated in several places such as Kauṭilya (II. 33), Ayodhyā 100.30 (= Sabhā 5. 46), Śānti 85. 31-32, Matsya 215. 8-10, Agnīpurāṇa 220. 1 ff, Kām. XVIII. 27-44, Viṣṇudharmottara II. 24. 4-6; Mānasollāsa II. 2, verses 90-92 p. 37. Acc. to the Agnīpurāṇa 220. 1, Matsya 215. 10 the commander-in-chief must be either a brāhmaṇa or a ksatriya. Śukra (II. 429-430) requires that a ksatriya should be preferred as senāpati, but if a valiant ksatriya be not available a brāhmaṇa may be chosen, but a śūdra should not be chosen. Acc. to the Mānasollāsa he should possess the following qualities: good family, character, courage, proficiency in (several) languages, cleverness in riding horses and elephants and in the science of arms, knowledge of omens and medicine, knowledge of the breeds of horses and of the difference between what is essential and non-essential, liberality, sweet speech, self-control, intelligence, resoluteness. In the Mahābhārata senāpatīs are elected and consecrated (vide Udyoga 151, Droṇa 5, Karna 10), but this was not so in later times. He is appointed by the king on his own initiative.

*Dūta*: (Ambassador or messenger). The word and the office of *dūta* as messenger was known in the most ancient times. In Rg. I. 12.1, I.161.3, VIII. 44.3 Agni is said to be the *dūta* and is requested to bring the gods to the sacrifice. There is also attached to the word the meaning of espionage, since Saramā, the bitch of the gods, is represented in Rg. X. 108. 2-4 as sent by Indra to find out the treasures of the Panis. The Udyogaparva (37.27, cr. ed. 37.25) specifies the eight qualities of a *dūta* viz. he must not be stiff-necked, nor timid, nor dilatory, he must be kind and amiable, not liable to be won over by others, free from diseases, endowed with a fine mode of speech.<sup>169</sup> Śānti 85.28 refers to seven qualities. Vide Ayodhyā 100.35, Manu VII. 63-64, Matsyapurāṇa 215. 12-13 for the qualities of a *dūta*. The *dūta* should speak only what he has been ordered (by his king) to speak, otherwise he would be liable to be killed (Udyogaparva 72.7, cr. ed. 70.7). Śānti 85. 26-27 say that the person of the *dūta* is sacred. Kauṭilya devotes one chapter (I. 16) to the treatment of the subject of *dūta*. He states that the *dūta* is to be sent by the king after the line of

169. अलङ्कारप्रदीपदीर्घवृत्तं साधुकोशं वृत्तमहायमम्भैः । अरोमजानीपद्यदाराचार्य  
हृतं वदन्त्यसुधोपकम् ॥ उद्योगपर्व 37. 27.



policy has been settled at a council of ministers to the king who is to be attacked (vide Kām. XII. 1 also). A dūta is of three kinds: (1) *nigatārtha*<sup>169</sup> (one to whom is entrusted full discretion as to what is to be said) is one who is possessed of the qualifications required in a minister (*amātya*), such as Kṛpa from the Pāṇḍavas or the ambassadors in modern times; (2) *parimitārtha* (entrusted with a definite mission, an envoy) who possesses the same qualifications as the first less by one quarter; (3) *āśanahara* (a mere carrier of royal writings or missives) who possesses only half the qualifications of the first. The Mit. on Yāj. I. 328 lucidly explains the three varieties. Kauṭ. dilates at great length on the qualifications of the dūta, what he has to note while in the enemy country, how he is to behave (such as avoiding women and wine), how he is to gather information through spies; but all this has to be passed over for want of space. Vide Kām. XII. 2-24 for the same. Kām. (XII. 22-23) briefly sets out the following duties of the dūta; determining those who are inimical to the king to whom he is sent, winning over to his side the friends and relatives of the enemy king, finding out the (number and equipment of) forts, the economic resources and military strength of the enemy king, collection of news as to what the enemy intends to do, bringing over to his side the officers in charge of the districts of enemy country, collecting knowledge about the places of the enemy where battles can be waged by his king or whence he can pass away swiftly. Manu VII. 65 says that it is the dūta who brings about alliance or war. Kauṭ. says that when the ruler to whom the dūta is accredited becomes displeased at the message he brings, the dūta should reply<sup>170</sup> 'All kings, you and others, speak through their dūta. Therefore dūtas have to deliver the message entrusted to them even if weapons are raised (to threaten them); even the lowest caste dūtas (*cāṇḍālas*) are not to be killed, what need be said about a dūta who is a

169. उद्भूतमन्त्रो दूतमणिभिः । अमात्यसंपवृत्तेषु निमुखायः । वादमुण्डीनः परिमितायः । अर्धमुण्डीनः शासनहरः । अर्धशाख I. 16: 'दूताश्च ये एकत्वेन राजान्तरं प्रति गतास्त-  
नाक्षरान्ति । ते च त्रिविधाः । निमुखायाः सन्दिधायाः शासनहराश्चेति । तत्र निमुखायां राज-  
कायाणि वेदकादौचितानि स्वयमेव वाचयितुं क्षमाः । उक्तानां ये परस्मै निवेदयन्ति ते  
सन्दिधायाः । शासनहरास्तु राजलेखहारिणः । निता. on वाङ्. I. 328.

170. तं वृथाद् दूतमुक्तं वै राजानस्य चान्ये च । तस्माद्दूतेष्वपि सर्वेषु यथोक्तं  
वक्तारस्तोषामन्तावसायिनोऽप्यवस्थाः । किमिदं दूतमोक्षणः । परस्मैतद्वाक्यमेव दूतधर्मं  
इति । अर्धशाख I. 16. Almost these very words occur in अतिविक्रमाश्रित (दूतमनुवेष्टा  
p. 171) and वनसिलक III. p. 364.

brāhmaṇa? 'This (that I utter) is the message of another. It is my duty to say it'. The Rāmāyaṇa (V. 52, 14-15) says that good men do not allow the killing of a dūta, but certain modes of dealing with him (viz. lashing him, shaving his head) are allowed in certain cases.

A dūta is to be distinguished from a *cara* or *cūra* (spy), as done by Kauṭ., Kām. XII. 32, Yaj. I. 328. Kām. XII. 32 says that a dūta is an open (*prakāśa*) spy, while a *cara* is a spy who works in secret. In modern times also 'an ambassador is often nothing more than an honourable spy acting under the protection of the law of nations' (Encyclopædia Britannica on 'espionage'). Kauṭ. devotes four chapters to spies (I. 11-14) and Kām. (XII. 25-49) also deals at great length with them. The Śukranitiśāra (I. 334-336) states that the king should learn every day at night from his secret spies the intentions and actions of his subjects and officers, and the opinions of ministers, enemies, soldiers, the members of the assembly, relations and the women in the harem. The *cara* must, according to Kām. XII. 25, possess ability to infer the inner thoughts (of men), must have a good memory, must be soft in speech, have quick gait, be capable of enduring privations and heavy labour, swift in action, ready-witted. Kauṭ. (I. 11) says<sup>171</sup> that spies are those who work in the guise of a *kāpātika* (a bold pupil capable of knowing the minds of others), *udāsthita* (a sham ascetic, who has fallen from the real duties of asceticism and is endowed with intelligence and pure character), *gṛhasthika* (a householder who is a cultivator that has not the means to maintain himself, has intelligence and is of pure character), a *śaṭkṛtaka* (a trader who cannot maintain himself by trade and is possessed of intelligence and pure character), a *śūpaṇa* (a spy practising austerities, who has either shaved his head or has matted hair and is desirous to maintain himself), a class-mate or colleague (*sutrin*), a desperate character (*likṣṇa*), a poisoner and a female mendicant. The first five of these are called by Kauṭilya five *śāśthās* (groups—

171. उपश्रमिः क्षुद्रानामपवर्गो गृहपुत्रास्तुत्याद्वेषः । कापटिकोऽद्विषतः पृथग्विक-  
वेदेष्टकतापमन्वजमानः सचिन्तितपरसद्भिर्निधुकीयः । परममैशः प्रवृत्तः छात्रः कापटिकः । ...  
पञ्चन्यायपवर्गसिद्धः पञ्चासौचपुत्र उद्धारिणः । ..... कर्षको हविर्क्षीणः पञ्चासौचपुत्रो  
गृहपतिकम्पजनः । वाणिज्यको हविर्क्षीणः पञ्चासौचपुत्रो वैदेष्टकपञ्चनः । ... कुण्डो जडिलो  
वा बुक्तिकामस्तापसपञ्चनः । ... पुजिताभ्यर्चनानाम्पि राज्ञा राजोपजीविनाम् । जलमीषुः  
शौचमित्येवः पञ्च संस्थाः पक्वैर्गतिः ॥ अर्थशास्त्र I. 11. पञ्चन्यायपवर्गसिद्ध means the same  
thing as पञ्चन्यायसिद्ध, which occurs in राज्ञ. II. 183 and is explained by the  
गितान्तरा as पञ्चन्याय संन्यासस्ततोऽपसिद्धः परपुत्रः. मेवालिधि on Manu VII, 154 quotes  
almost verbatim a large part of Kauṭ. I. 11 from कापटिकोः and a portion  
from I. 12.



or institutions), which should be honoured by the king with awards of money and marks of respect and through which the king is to test the parity of the character of his servants. Kautilya says that the spy called *udāhata* should carry on agriculture, cattle-rearing and trade on land set apart for the purpose, should be supplied with plenty of gold and disciples and should afford to all (sham) ascetics food, clothing and lodging, direct them to detect particular crimes and report. The spy called *tūpasi* was to stay near the capital, to have many pupils, to pretend to eat once in a month or two only a handful of vegetables or grass and eat secretly his favourite dishes. His disciples were to proclaim that he possessed supernatural powers, he should pretend to make predictions about gain or fires or fear from robbers after ascertaining from his pupils by nods and signs such events. In I. 12 Kaut. deals with wandering spies (called *sañcara*) viz. *satrins* (who are orphans that are to be maintained by the State and that are taught palmistry, sorcery, tricks of legerdemain &c.), *tikṣu* (desperadoes who, regardless of their lives, may fight elephants for money), *razada* (who have no affection even for their relatives, are indolent and cruel), *bhikṣuki* or *parivrājikā* (a poor brāhmaṇa widow, clever and desirous to earn her livelihood, honoured in the king's harem and visiting the families of mahāmātras or high ministers). These are to spy on the 18 *āśhas* (mentioned on p. 112 above) in public. For spying on their private character persons pretending to be hump-backed, dwarfs, kirātas (pigmyes), the deaf and dumb, idiots, the blind, and others that are actors, dancers, singers and the like and women are to be employed. This information is to be tested by the persons belonging to the five *saṁsthās* (mentioned above on p. 129), but these are to act without their being known by the wandering spies and *vice versa*. Then further testing by other spies follows. When the information received from these three sources tallies then it will be held reliable: if the information frequently disagrees, the spies should be secretly punished or discharged. A similar rule about sending several spies on the same mission without their knowing each other is laid down by Viṣṇudharmottara II. 24. 66-67. Kaut. in I. 13 deals with espionage on subjects in general (i.e. those in the capital and other parts of the country). Spies are to pretend to take sides, some praising the king as possessed of all good qualities, others qualifying that praise. They were also to report the rumours spreading among the people, to report whether there was discontent and the king was to honour those who were reported to be contented and to

bring round the discontented by conciliation, gifts, sowing dissensions among them or by punishing them. In I. 14 Kautilya deals with the employment of spies for taking advantage of parties in a foreign State i. a groups of persons angry with the foreign king or afraid of him or of persons who are ambitious or proud, who are to be won over by appropriate words and stimuli. It will be seen how there was a network of spies of all kinds, so much so that Kām. XII. 28 declares that spies are the king's eyes (*cārucaṣṣur mahipatib*). The Viṣṇudharmottara II. 24. 63 says the same ('*rājānaḥ-cārucaṣṣuṣaḥ*') and also Udyoga 34. 34 '*cāruḥ padyanti rājānaḥ*'. In IV. 4-6 Kautilya dilates<sup>172</sup> upon the employment by the samāhartṛ (Collector) of a host of spies for suppressing those who are thorns (or disturbers of peace), these being employed for detecting judges (dharmastha) and superintendents of various departments that take bribes, counterfeiters of coins, adulterers, thieves and robbers and other criminals. Kautilya relies in extreme cases on spies even in the decision of judicial matters. He says (III. 1 last verse) 'when owing to the depositions of witnesses the plaintiff's case and the defendant's case are both destroyed, when the cause of either of the parties is found through the spies to be false, then the decree shall be passed against that party'.<sup>173</sup> In Droṇaparva 75. 4 it is said that Kṛṣṇa had his spies in the army of Duryodhana and vice versa (74. 1). Śānti 69. 8-12 and 140. 39-42 mention the places where spies are to be set<sup>174</sup> up and emphasizes that they should not know each other. One need not feel surprised at the machinery of espionage that Kautilya so elaborately describes. All governments in modern times employ spies, informers and secret agents to keep themselves informed of the activities, views and resources of their opponents. We know also how the Indian Police, in order to catch offenders against the Prevention of Gambling Act or other similar Acts, employ agents with marked coins or notes and draw in their not unsuspecting people.

172. समाहर्ता जनपदे सिद्धतापममज्जितश्च करचारणकुलकपञ्चम्वलकानाम्भिकनै-  
भित्तिकनौद्विकचिकित्सकोममममकनधिरजडाग्धवेदेहकादशिलिपकुशीलपवेप्रीसिंहकापु-  
षिकपात्रमसिकोदभिकपजनान् पण्डितपण्ड । ते द्वागानामप्यक्षान् च सीचान्तेषु  
विदुः । अथशास्त्र IV. 4. Compare नीतिशास्त्रसामुद्र (चारुसमुद्र) p. 172 for a long list  
of various kinds of people as spies.

173. पूर्वोक्तसामर्थ्यावाप्ते साक्षिषकपकारणे । चारुतापञ्च निष्पाते पदेष्टव्यः परा-  
जयः । अथशास्त्र III. 1. last verse.

174. पाण्डुरास्तापसादीन् पराङ्गे निवेशयेत् । उद्यमेषु विहरिषु वशात्प्राप्तयेषु च ।  
प्राप्तयेषु वेशेषु तीर्थेषु च समाहृत्य च । शान्ति 140. 39-42; तथा न विदुस्सन्धेयं कश्चि-  
देवास्तापान्ते ते । शान्ति 69. 10.



## CHAPTER V

### RĀSTRA (THE TERRITORY OF A STATE)

The word 'rāstra' occurs even in the Rgveda (IV. 42.1, 'mama dvita rāstram ksatriyasya')—'mine is the kingdom on both sides (or in both spheres)' says king Trasadasyu. In Rg. VII 34.11 Varuṇa is praised as the Lord of rāstras (rāja rāstrānām &c.). In Rg. VII 84.2 and X. 109. 3 the word rāstra occurs. In a very famous benedictory <sup>175</sup> passage of the Tai. S. VII 5. 18. 1 (= Vāj. S. 22.22) one of the blessings invoked is 'may the king in this kingdom become brave, a skilled archer, and a great warrior'. Vide Tai. Br. III. 8. 13 for explanation of the Tai. S. passage. In the Atharvaveda XII. 1. 8 and 10 the earth is called mother and invoked to impart to the *rāstra* strength and brilliance (or energy). Kām. VI. 3 says <sup>176</sup> that since all the elements of the State spring from the territory of the State, the king should raise up his territory with all his efforts. The Agnipurāṇa 239. 2 holds that rāstra is the most important of all elements of the State. Manu VII. 69 prescribes that a king should make his home in a country that is not water-logged (i. e. is dry and not moist), <sup>177</sup> is rich in crops, inhabited mostly by Āryas (or well-conducted people), not disturbed (by epidemics &c.), that is charming (owing to trees, flowers and fruits), the chiefs in which have submitted to him and in which livelihood can be had easily. Yāj. I. 321 and Viṣṇudharmasūtra III 4-5 are to the same effect. Kām. (IV. 50-56) remarks 'the territory of

175. आ ब्रह्मन् ब्राह्मणो ब्रह्मवर्चसो जायतामस्मिन् राज्ञे राज्यं वृद्धयः शूरो महारथो जायतां दोग्धी धेनुर्गौतमश्वागाव्यः सतिः दुरन्तिर्वीर्यं निष्पद्येष्टः समेवो दुषस्तप्यजसाकृष्य वीर्यं जायतां निकामे निकामे वा पञ्चमो वर्षतु कलिभ्यो न ओषधयः पचन्ती योगक्षेमो वा कल्पताम् । जै. सं. VII. 5. 18. 1, वाज. सं. 22. 22 (with slight variations).

175a. राज्यद्वान् ; च सर्वेषां राजाङ्गवति सम्भवः । तस्मात्सर्वव्याप्तेन राजा राज्यं समुज्जयेत् ॥ काम. VI. 3. The राज. र. p. 86 ascribes this to शुक्र (and reads the last word as पसाधयेत्).

176. अस्मोदकतृणो यत्तु प्रवातः यत्पुरातपः । य जेषो जातुलो देसो बहुधाग्वदि-संयुतः ॥ quoted by कुल्लुक on मनु. VII. 69 ; स्वल्पशुभोदकवर्चसो बहुपक्षिभ्यः यत्पुरातप्यजसाकृष्य जातुलो देस इति । quoted by राजनीतिप्रकाश p. 197 from a सूक्ति. The मिता- on वा. 1.321 remarks यत्तुप्रवातोदकवर्चसोदेसो जातुलस्तथाप्यज सजलदवर्चसो देसो जातुलस्तथाप्यजसजलदवर्चसो ।

the king depends for its prosperity on the qualities of the soil, the prosperity of the territory tends to the prosperity of the king; therefore a king should choose for the sake of his prosperity land possessing good qualities. That land is preferred for the sake of prosperity that is endowed with various crops and minerals, is full of merchandise, mines and various substances, that is favourable to cattle-rearing, that abounds in water, is inhabited by well-conducted people, is charming, has forests and elephants, has facilities of water and road transport and does not depend upon rain-water only.<sup>177</sup> Land that is full of gravel and stones, full of forests always infested with thieves, that is waterless, full of thorny bushes and snakes is not fit for choosing as a *rāṣṭra*. A country is to be preferred that yields livelihood easily, is possessed of the qualities of good land ( cited above ), is full of water, that has hills in it, that consists mostly of *sūdras*, artisans and merchants, the husbandmen in which undertake great projects, that is loyal ( to the king ) and averse to the king's enemy, that can put up with troubles and taxes, that is large in extent, full of people from various countries, that follows the right path, that possesses plenty of cattle and wealth, the principal men in which are not foolish nor vicious. These requirements show that the country must be prosperous, well-stocked with the necessities of life and well suited to defence. There is also some difference of opinion among the *smṛti* writers about the composition of the population. *Mānu* VII. 69 requires that the kingdom should consist mostly of *āryas* (*āryaprāya*), while *Viṣṇu* Dh. S. III. 5 holds that a country should be peopled mostly by *vaiśyas* and *sūdras*. In another place ( VIII. 22 ) *Mānu* says that that country in which *sūdras* abound, which is full of atheists and void of *dvijas* is overwhelmed by disease and famine and perishes. Similar provisions are found in the *Matsyapurāṇa* 217. 1-5, *Viṣṇudharmottara* II. 26. 1-5, *Mānasollāsa* ( II. 3. verses 151-153 ), *Nītivākyaṃṛta* ( *Janapadasamuddeśa* p. 191 which defines *rāṣṭra*, *viśaya*, *deśa*, *janapada* &c. ), The *Matsyapurāṇa* 217. 5 and *Viṣṇudharmottara* II. 26.5, ( *examidham gūṭhālūbham rājā viśayamāmet* ) point out that

177. अवेदमातृका चेति कथ्यते भुविभूतये । काम. 4. 52. देवतो नद्यम्बु-पृथक्चम्बु-संपन्नोऽपिवास्तिः । इत्यत्र देविमातृको देवमातृकश्च यथाक्रमम् ॥ अमरकोशः ; where the rice crop depends solely on the rainfall the country is called देवमातृक ( देवो माता यद्वत् ) and where it depends on the water of rivers, tanks &c. it is called नदीमातृक.



every *rāṣṭra* cannot be expected to possess all the qualities mentioned by them and that the king must do the best with such qualities as his country possesses. Kautilya II. 1 advises<sup>178</sup> the king to found a district of villages either on old sites or on new ones by inducing people from other countries to immigrate or by causing thickly populated parts of his own country to send its overflowing population and to see that each village consists of not less than one hundred families nor more than five hundred, is peopled mostly by *sūdra* cultivators, has an extent of one *kroṣa* or two and is capable of offering help to its neighbours.

According to Paurāṇic geography there are seven *dvīpas*, viz. Jambu, Plakṣa, Śālmala, Kuśa, Krauñca, Śaka and Puṣkara (Viṣṇupurāṇa II. 1. 11 ff) and each *dvīpa* is divided into *varṣas*. Jambudvīpa has 9 *varṣas* of which Bharatavarṣa is the first (Viṣṇupurāṇa II. 2. 12 ff). The Mahābhārata speaks of 13 *dvīpas* (Ādī. 75. 19, Vanaparva 3. 52 and 134. 20) and 18 *dvīpas* also (Droṇa 70. 15). For Bharatavarṣa vide H. Dh. vol. II. pp. 17-18. Manu II. 20 looks upon the holy land of Kurukṣetra, of the Matsyas, Pāñcālas and Śūrasenas as 'the chosen country' the learned brāhmaṇas in which were to be the leaders and guides of the whole world in appropriate thoughts and actions. The Viṣṇu (II. 3. 2), Brāhma, Mārkaṇḍeya 55. 31-22 and other purāṇas proudly assert that Bharatavarṣa is the land of action (*karmabhūmi*). This is patriotism of a sort but not of the kind we see in western countries. Bharatavarṣa itself has comprised numerous countries from the most ancient times. The names of countries and the tribes or people inhabiting them were the same (vide Pāṇini IV. 1. 168,

178. धृतपूर्वमधृतपूर्वं वा जनपदं परदेशापवाहनेन स्वदेशान्निवन्धनमेव वा निवे-  
शयेत् । सूत्रकर्षकपार्श्वं कुलश्रवाणं पञ्चकुलपरं त्रामं क्रोशद्विक्रोशसोमानमन्योऽप्यार्यं  
निवेशयेत् । अर्थशास्त्र II. 1. This passage clearly shows that Kautilya at least  
employed the word *janapada* in the sense of a territory to be colonized  
and as one which was either included within the kingdom or not so included.  
Dr. Prān Nath's interpretation of *janapada* that it was only 'a part of the  
kingdom' (p. 47, 'Study in the economic condition of ancient India')  
cannot be accepted in view of the express words धृतपूर्वमधृतपूर्वं. The usage of  
classical writers and the Purāṇas shows that *janapada* means simply 'country'  
and Amara gives it as a synonym of देश and विशय and हरिवरदाजी explains that  
जनपद is called राष्ट्र. The Kāvyaśikṣā on which Dr. Prān Nath relies  
for the number of countries employs the word *janapada* for the names of  
the countries in the four quarters of India (not for parts of any kingdom).

IV. 2. 81). In the Rgveda we come across the tribes of Yadus, Turvasas, Druhyas, Anus and Pūrus (Rg. 1. 108. 8, VIII. 10. 5 &c.) and the countries of Cedi (VIII. 5. 39), Kikata (III. 53. 4), Bṛjka (VIII. 7. 29), Ruśama (V. 30. 12), Vatasu (X. 49. 4). In the Atharvaveda V. 22 several peoples or countries are mentioned of which Bahlikas (in vv 5 and 9), Mūjavat (vv 5 and 8), Gandhāri, Aṅga, Magadha (in v. 14) deserve notice. The Ait. Br. (38. 3) divides India into five divisions in the east, south, west and north (the Uttara Kuruś and Uttara Madraś) and in the centre (Kuru-Pāñcālaś and Vaśa-Uśinaraś). India was divided into two parts, Dakṣiṇāpatha (from the Narmadā southwards) and Uttarāpatha at least some centuries before Christ, since the Hāthigumphā Ins. (E. I. vol. 20 at p. 79) mentions a great many kings of Uttarāpatha and the Mahābhāṣya refers to lakes in Dakṣiṇāpatha.<sup>179</sup> In the Brāhmaṇas frequent mention is made of the Kuru-Pāñcālas (Tai. Br. I. 8. 4), Uttarakuru, Uttara-madra, Kuru-Pāñcālas, Vaśa-Uśinaraś (in Ait. Br. 38. 3), Kuru-Pāñcālas, Aṅga-Magadhas, Kāśī-Kośalaś, Śālva-Matsyaś, Vaśa-Uśinaraś in Gopatha II. 10 (ed. by Gastra). The Gandhāraś occur in Chāndogya Up. (VI. 14. 1), Videha in Br. Up. III. 1. 1, Madraś in Br. Up. III. 3. 1. In the Mahābhārata there are long lists of countries in various connections, which are more than 200 (e. g. Sabhā 4. 21-32, 20. 26-30, Sabhā 25 ff, Sabhā 52. 13-19, 53. 5-9, Virāṭa 1. 12-13, Bhīṣma. 9. 39-69, 50. 47-53, Droṇa 11. 15-18, 70. 11-13, Āśvamedhika 73-78, 83. 10 ff.) The Baudhāyana-grhyaśaśasūtra I. 17 prescribes a maṇḍala for the worship of the Sun and names nine countries in the eight directions and in the centre as representatives. The Purāṇas also contain long lists of countries e. g. Matsya 114. 34-56, Mārkaṇḍeya 57. 32-67 and chap. 58, Brāhma 17. 10-15 and 25. 25-39. The same country sometimes has two names (e. g. Vīdarbha and Krathakaiśika denote the same country in Raghuvamśa VII. 1 and 32). 'Buddhist India' (by Rhys Davids p. 23) mentions the sixteen peoples (or countries), lists of which occur in the Aṅguttaranikāya I. p. 213, IV. p. 252 and in the Dīghanikāya

179. The महाभारत names at least the following countries: अजमेर, अङ्ग, अम्बह, अवन्ति, इक्ष्वाकु, उशीनर, अषिक, कदौर, कलिङ्ग, कश्मीर, काशि, कुन्ति, कुङ्ग, केरल, कोसल, कुण्डक, कम्पार, चोट, जिह्वु, विजय, दमार्ज, नीचक, नीप, नेत्र, पञ्जाल, पारसकर, इन्द्र, मगध, मज्ज, महिष, मालव, पुण्ड्रवर, वङ्ग, निदर्भ, विदेह, हजि, शिबि, सुह्र, सौवीर. Some countries like अवन्ति, अश्मक, कलिङ्ग, कम्पोज, कुङ्ग, कोसल, मगध, मज्ज, मालव, सौवीर are mentioned even by वाकिनि (in IV. 1. 170-176, IV. 2. 108).



II. p. 200 viz. Angas, Magadhas, Kāśis, Koslas, Vajjis, Mallas, Cetis (Cedis), Vamsas (Vatsa?), Kurus, Pāñcalas, Matsyas, Śūrasenas, Āśmakas, Avantis, Gandhāras, Kambojas. Varāhamihira's *Bṛhatsaṃhitā*, Baudhāyana-grhyasūtra I. 17, Kāmasūtra V. 6. 33-41, Bārhaspatya Arthashastra (III. 83-117), the *Kavyamīmāṃsā* of Rājasakhaṛa (17th chapter) name numerous countries. This last divides India into five regions and gives the names of about 70 countries in the four directions but none from Central India. The *Bhāvaprakāśana* (pp. 309-310) gives a list of 64 countries and states that Dakṣiṇapatha (Deccan) is a fourth of Bharatavarṣa and that in the *Tretā* and *Dvāpara* ages people afraid of being overwhelmed by ice came down to the south.<sup>179a</sup> 56 countries are named in some Tantra works (vide 'Indian Culture' vol. VIII. p. 33). In the lexicon called *Valjayanī* of Yādavaprakāśa (11th century A.D.) edited by Dr. G. Oppert, over a hundred countries and capitals of some of the countries are named (in the *Bhūmikāṇḍa* and chapter on *deśa* thereof).

To constitute a *rāṣṭra* a territory of some size and a large population are required. There can hardly be a *rāṣṭra* of a few villages or a few hundred inhabitants. The boundaries of the numerous countries mentioned in the works cited above must have been fluid and must have changed from country to country owing to conquests.

In ancient India the modern sentiment of nationalism had hardly taken root. Writers speak of *rājya* (State) and of *rāṣṭra* (territory) as an element of *rājya*. They had no sense of nationality nor did they seriously work for national unity. The modern idea of a nation is more a question of feeling and sentiment than of objective fact. The State has been at all times a great co-ordinating agency, but as its boundaries were extremely variable in ancient India, the modern sentiment of nationality, of 'my country, right or wrong' hardly ever arose in India (except perhaps for over a century in Mahārāṣṭra in the 17th and 18th centuries and among the Sikhs). In the whole of Hīndu India, there was no doubt a certain unity of religion, philosophy, literary forms and conventions of arts and forms of worship, and in reverence for holy places, but this did not make for a deep-seated and effective sentiment of nationhood or national unity.

<sup>179a</sup>. मेरापुरे हापरं च हिमाकान्निबन्धनम् । पापं पापं विदुर्गते अग्ने वासि-  
नामधम् । भावप्रकाशम् p. 309.

Most of the ancient sūtrakāras and smṛtis try to lay down the limits of the holy land of Āryāvarta and differentiate it from the lands of *mlecchak*. Vide H. of Dh. vol. II. pp. 11-18. The Viṣṇu (II. 3. 1-2), Mārkaṇḍeya (55. 21) and other purāṇas wax eloquent over the importance of Bharatavarṣa and describe it as the land of action for those who want to secure heaven or final release or as the land where alone sin and religious merit were to be found (*karmabhūmīr-āgam svargam-apavāryam ca gacchadāni* or *fat-karma-bhūmīr-nānyatra samprāptiḥ puṇyapāpayoh* in Mark.). Manu (II. 20) manifests great pride in and love for the holy countries of Brahmāvarta, Kuruksetra, Matsya, Pāṇcāla and Śūrasena by glorifying the brāhmaṇas of these countries as those 'from whom all men on this broad earth should learn the actions and usages appropriate to them'. Vas. I. 10 also says the same. Śāṅkha-Likhita (q. by Visvarūpa on Yāj. I. 2) hold that the country of Āryāvarta is endowed with high qualities, is ancient and holy (*deśa Āryo guṇvān ..... sanātanaḥ puṇyakaḥ*). As however the smṛtis were composed at different times, embodied the usages of different provinces in India and as they provided for the observances of all those who followed the Veda, they do not generally lay emphasis on localities but rather on what they thought was common to all Āryas in India (*yat tu samānam tad vakṣyāmi*, as Āśv. gr. says). There was no doubt a great emotional regard for Bharatavarṣa or Āryāvarta as a unity for many centuries among all writers from a religious point of view, though not from a political standpoint. Therefore one element of modern nationhood viz. being under the same government was wanting. But it must be noted that from very ancient times there was always the aspiration among great kings and the people to bring the whole of Bharatavarṣa "under one umbrella". Even in the West the sentiment of nationality practically arose after the partition of Poland, and as a consequence of the French Revolution and of the Industrial revolution, which led manufacturing countries to search for markets and to exploit backward and less developed peoples. Vide Laaki's 'Grammar of Politics' chap. VI. Modern nationalism undoubtedly leads to great self-sacrifice and produces certain virtues of high value in the individuals that are fired by that sentiment. But the ideals of the modern nation States are not high, particularly in their treatment of other peoples and in their attitude towards less favoured States. The one aim of the leading politicians of modern nation States and most of the inhabitants of these States seems to be to raise the standard of



living of their citizens to a high level and to maintain it at that level even by exploiting and robbing weaker races and lands. This is not the place to discuss these matters further. Whatever the value of nationalism to the individuals fired by it may be, from the point of the welfare of the whole of mankind, modern nation States do not deserve to survive, unless the so-called progressive nation States are prepared to give up their racial pride, their spirit of grabbing and exploitation and to extend a brotherly hand to all struggling States to improve themselves in their own way and attain to higher standards of living without let or hindrance. It cannot be gainsaid that for several centuries in the past and also at the present moment all modern nation States have two moralities, one for their own nation and the other for their dealings with foreign States and races.

Some remarks must now be made about provincial and local administration. Each kingdom comprised *deśas* (countries) and subdivisions of *deśas*. The governor of a *rāstra* was called *rāstrapati* or *rāṣṭriya*. Vide p. 117 above about Pasyagupta having been the *rāṣṭriya* of *Surāstra* (Kathiawad) under Candragupta Maurya and Śānti 85.12 (which describes what the *rāṣṭriya* is to do).

According to the *Amarakośa* the words *deśa*, *rāstra*, *viśaya* and *janapada* are synonyms. Epigraphic usage is not uniform about the dimensions of these. Sometimes *viśaya* appears to be a sub-division of *deśa* (vide the words '*rāstrapati-viśayapati-grāmakūṭa*' in I. A. vol. VIII. at p. 20 in the grant of *Calukya Tribhuvanamalla* in śake 999 and I. A. vol. XII pp. 247, 251 in the grant of *Rāṣṭrakūṭa Govinda* in śake 855). But in the *Hirahadagalli* plates (E. I. vol. I. p. 5) '*viśaya*' occurs first and then '*rāstra*'; so it appears that there '*viśaya*' is deemed to be larger than *rāstra*. According to the *Sahyādrīkhanda* (uttarārḍha, chap. 4) *deśa* is made up of 100 villages, *maṇḍala* is made up of 4 *deśas*, a *khanda* of 100 *maṇḍalas* and the earth has nine *khandas*.<sup>180</sup> From the Cambay plate of śake 852 (930 A. D.), we see that *maṇḍala* was a sub-division of *deśa* (E. I. vol. 7 p. 26, at p. 40). From

180. शास्त्रान्ते भवेद्देशो देशचत्वारि मण्डलम् । इतमण्डलं भवेत्खण्डं मण्डलं च मेदिनी । सङ्गाद्विषयः उत्तरार्धे chap. 4: 'लाटदेशखेटकमण्डलान्तर्गतकाविकामहास्यान-विनिर्गतम्' in E. I. vol. 7 p. 40; 'अश्विपुत्रवर्धनमुक्तौ कोटीवर्धविषये लोकलिकामण्ड-लान्तःपाति ... ग्रामः' in E. I. vol. 14 p. 324.

the Bangarh grant of Mahipāla I (E. I. vol. 14 p. 324) and the Amgachhi plate of Vigrahapāla III we see that *maṇḍala* was smaller than *viṣaya* which again was a subdivision of 'bhukti'. The word 'bhoga' (which is similar in origin to 'bhukti') appears to be applied to a sub-division of *viṣaya* (which in its turn is a sub-division of *rāstra*) in the Bhamdak<sup>151</sup> plate of Kṛṣṇarāja I dated śake 694 (E. I. 14 p. 121, 126) and also in the Jejuri plates of Vinayāditya in 609 śake (E. I. vol. 19 p. 62 at p. 64 where the word 'rāstrapati' does not occur). The *Mitākṣarā* on Yaj. I. 319 explains that only a king (*mahipati*) can make a grant of land and not a *bhogapati* (i. e. the officer over a *bhoga*). Another ancient word for a division of a country is *dhūra* which occurs in the Rupnath Rock inscription and Sarnath pillar Edict of Aśoka (Corpus I. I. vol. I pp. 162 and 166), in the Nasik Inscriptions No. 3 and 13 (Govardhanāhāra and Kapurāhāra, E. I. vol. VIII pp. 65 and 82) and in the Karle Ins. No. 19 (E. I. VII. p. 64) where we have Māmalāhāra, modern Māval (in Poona District). For want of space it is not possible to pursue this subject here. For further information vide Dr. Fleet in J. R. A. S. for 1912 p. 707 and my paper on 'the Ancient Geography of Mahārāstra' (JBBRAS. vol. XXIV for 1914-1917 pp. 648-653). In the epigraphic records particularly of the Deccan and South India we come across names of territorial divisions to which small as well as very large figures (indicating the number of villages they comprised) are affixed: e. g. a group of twelve villages in Aparānta on the sea near Kalvivāna (modern Kelvem) is mentioned in the Sanjan plates of Budhavarasa (E. I. 14 p. 144 at p. 150), Nyāyapadra *saptadaśa* in Bhoja's grant in *śaṅkṛt* 1076 (E. I. 18 at p. 322), Kisukād 70 (E. I. 15 p. 73), Belvola 300 (in E. I. 13 at p. 40), Koṅkaṇa 900 ruled over by the Kadamba king Jayakeśi II (E. I. 13 pp. 298, 317), Tardavādi 1000 (E. I. 15 p. 25), Kuṇḍi 3000 (E. I. 13 at p. 18), Pratyāṇḍaka 4000 (E. I. III. p. 306), Karahāta 10000 (E. I. 13 p. 275), Banavāsi 12000 (E. I. 13 p. 179), Nolaṃhavādi 32000 (E. I. 19 p. 187), Kavaḍidvīpa *sapādalakṣa* (one and a quarter lakh) in E. I. 13 at p. 299, the country of 7½ lakhs (in the Lakshmeshwar Ins. of Vikramāditya VI in E. I. 16 p. 31). Vide Dr. Fleet in J. R. A. S. 1912 pp. 707-710 as to the meaning of these figures.

151. राष्ट्रपतिविषयपतिभोगपतिपथुर्लाल समान्तरपति । E. I. vol. 14 p. 121 at p. 126 ; सप्तविषयधारासंयध्यमानकान् राष्ट्रपतिविषयपतिग्रामकुटुम्बसंयुक्तकोषयुक्तकार्षिकारिकान् समानदिशति । E. I. vol. VII. p. 26 at p. 40.



Kaṇṭilya II. 1 says that in the kingdom groups of villages should be set up with a chief town or fort in each, a group of ten villages being called Saṅgrahapa, of two hundred villages being called Khārvatika, of 400 villages being called Drona-mukha, and in the midst of 800 villages<sup>182</sup> there is the Sthāntya-

182. अष्टशतग्राम्या मध्ये स्थानीयं चतुःशतग्राम्या द्रोणमुखं द्वादशग्राम्याः शान्ति-  
वसमानिस्तद्वेगेन संवहणं स्वयमेव । Kaṇṭilya II. 1. Vide Dr. Shamāsari's note  
on these. स्वानीय has a similarity in sound and meaning in modern *thānā*.  
Dr. Prān Nāth (in 'Study of the economic condition of Ancient India',  
p. 26) principally relying on a commentator of the Jain work called  
Prajñāpanopāṅga (which he misunderstands) holds that 'grāma' does not  
mean 'a village', but 'an estate or survey village which can pay 18 kinds  
of Government taxes'. The learned Doctor says that he consulted many  
Sanskrit lexicons, but did not find this interpretation in any one of them.  
That should have induced him to be cautious. But he makes the bold and  
facile assumption that 'lexicons were compiled from a literary view-point  
and are not of much assistance as far as the technical meanings of words  
are concerned'. His great authority, the Jain commentator, says 'गामविशेषेषु  
इत्यादि । वसति बुद्ध्यादीन्धुनानि धामाः पवि वा मयः शासनसिद्धान्तवाक्य-  
कारणानि धामाः'. Dr. Prān Nāth's Jain authority is no better than  
lexicographers and their commentators. श्रीरामायणी on Amara derives grāma  
as 'ग्रवते भोगिनग्रामः' i. e. the word ग्राम is derived from the root ग्रव. The  
Jain commentator first derives the word ग्राम from ग्रव and then from मव.  
Dr. Prān Nāth forgets that a fanciful or scholastic derivation is not a  
definition. The rest of the reasoning on the new meaning of grāma is on a  
par with this and cannot be examined in detail. A commentator expressly  
states (*ibid* p. 27) that he gives only the *vyutpatti* (etymology) of grāma,  
but Dr. Prān Nāth pays no heed to this. He has not correctly grasped the  
scholastic discussion in the commentary quoted on p. 27. He misunder-  
stands the word 'samagrāmāḥ' in Yāj. II. 132. The Amaraśastra expressly  
says that 'santa' and 'samāna' are synonyms. He is often very dogmatic  
without looking into all ancient and medieval authorities e. g. on p. 51  
he charges Dr. Fleet with misinterpretation of a Jātaka text (*ajjha-tiyāni  
sātāni*) which Dr. Fleet translated as 250, while Dr. Prān Nāth is sure that  
the meaning is '150'. He probably never noticed that so far back as the  
2nd century A. C. the Mahābhāṣya had explained the word 'ardhaśrīṇya' as  
Dr. Fleet does (अर्धं तृतीयमेव or अर्धं तृतीयमनयो; vide Kiehnorn, vol. I. p. 426  
on *vārtika* 22 on Pāp. II. 2, 34). There is hardly any warrant for Dr. Prān  
Nāth's assertion that each grāma (as interpreted by him) contained only about  
five families and had only about 15 or 20 acres of cropped area  
(pp. 39-40). Kauṣ. (note 178) states that a grāma contains from 100  
to 300 families. If the inscriptions so far published are carefully  
scratched it will be found that grāma ordinarily means a village in the  
modern sense and included several hundred acres of land. For example,  
in a grant of Pallava Yuvamahārāja Viṣṇugopavarman (I. A. vol. V p. 50)

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Manu VII. 114 similarly observes that in the midst of two, three or five villages the king should place a central post of guards called 'gulma' and another called 'saṅgraha' in the midst of a hundred villages. Manu VII. 115-117, Viṣṇudharmasūtra III. 7-14, Śānti 87.3ff, Agni-purāṇa 223. 1-4, Viṣṇudharmot-tara II. 61. 1-6, Mānasollāsa II. 2. 159-162 (p. 43) require the king to appoint a hierarchy of officers for one village, for groups of ten, twenty, hundred and thousand villages, who are to report what is wrong within their jurisdictions that they cannot themselves remedy to the officer next in grade above themselves and Manu VII. 120 prescribes that a minister of the king should supervise the doings and conflicts of all these officers. The Edicts of Aśoka show that he had to employ a hierarchy of officers such as the mahāmātras, the yuktas and rājukas for the administration of his vast empire. A similar administrative system seems to have been continued under the Gupta Emperors. From the Damodarpur, Baigram and other plates (E. I. XV. p. 113, E. I. XVII pp. 345ff, E. I. XXI p. 78) it appears that the Provincial Governors were appointed by the Gupta Emperor himself and were called *uparika mahārāja*, that either the Governors or Emperors appointed District officers (*viṣayapati*) who were often called Kumāramātya, that the District officers were aided in their administrative work by a board of four advisers called *nagara-śreṣṭhin* (banker), *sārthavāha* (chief merchant), *prathamakuḷika* (chief of craft guilds) and *prathamakāyastha* (chief secretary), that the District officer had his

(Continued from last page)

very detailed and accurate boundaries of a village of 200 *nivartana*s are given. A *nivartana* was equal to a square of twenty *varṇas* on each side, each *varṇa* being equal to ten cubits; so that a *nivartana* covered an area of 40000 cubits (200 × 200) i. e. about 90000 square feet, while an acre is equal to 43560 square feet. Therefore the village referred to in the above grant was over 400 acres in extent. The Mahābhārata (on *vārtika* 3 on Pān. I. 1. 7) has no interesting discussion on the several meanings of the word *grāma* in popular language viz. a number of houses (as in 'the *grāma* was burnt'), the village wall or ditch (as in 'he entered the *grāma*'), 'men' (as in 'the *grāma* had gone'), a village with its forests and bushes, with its boundaries (such as rivers and hills) and with embanked fields (as in 'a *grāma* was acquired'). 'ग्रामशब्दोपे बहवैः । अस्यैव शाब्दासमुदाये वर्तते ... अस्मिन् शास्त्रेण सप्तभिन्नेषु बहवैः । तद्यथा ग्रामो लब्ध इति । As in modern times villages are found named after trees the same was the case in the days of Pān. and Patañjali शिरीषाणामहुरपि ग्रामः शिरीषः । तस्य ग्रामस्य वनं शिरीषवनम् । महाभाष्ये on Pān. I. 2. 51 (vol I, p. 224.).



headquarters in a place called *adhiṣṭhāna* and had his several offices or courts (*adhikaraṇas*), and that in sales of lands revenue officers called *pustapālas* (keepers of records of rights) were consulted and had to report. In E. I. vol. XVII. pp. 345, 348 a copperplate of Kumāragupta I has 'grāmasta-kulādhikaraṇam' which means an office having jurisdiction over 8 villages. Manu VII. 119 says that the officer over 10 villages was to have as his salary a kula of land and kula is here said to mean (by Kullūka) as much land as is ploughed by two ploughs having six oxen yoked to each. The Vaiṣṇavānti on Viṣṇu Dh. S. III. 15 says 'kulam haladvayakarsanīyā bhūh'. Śūkra (I. 191-192) states that the lord of one hundred *grāmas* is called *sāmanta*, an officer appointed by a king over one hundred villages is called *anusaṁanta*, one over ten villages is called *nāyaka* (compare modern 'naik'). Manu VII. 61 and 81, Yaj. I. 322, Kām. V. 75, Viṣṇudharmasūtra III. 16-21, Viṣṇudharmottara II. 24. 48-49 say that the king should appoint as many *adhyakṣas* (superintendents) as are required for the several departments of the state, who are clever, honest and of good family. Kautilya<sup>183</sup> II-9 prescribes 'those who are possessed of the qualifications for *amātyas* (cited on p. 107 above) should be appointed, according to their abilities, as superintendents of the various departments and the king should constantly examine their work, since men are naturally fickle-minded and when appointed to do work exhibit like horses change of temper'. It is pointed out in works like the Viṣṇudharmasūtra III. 16-21 and the Viṣṇudharmottara II. 24. 48-49, Śānti 69. 29, that those who are highly devoted to dharma should be appointed to the ecclesiastical or judicial department, the brave ones to military work, those who are skilled to revenue work and those who are very trustworthy should be placed in charge of mines, salts, toll-gates, ferries, elephant forests.

Kautilya in his 2nd *adhikaraṇa* exhaustively deals with the work done in 28 departments and the duties of their superintendents. He enters into very minute details about each and his work is encyclopaedic in character on this subject.

183. अमात्यसम्पदोक्ताः सर्वाध्याः शक्तिः कर्मसु निवेष्टयाः । कर्मसु चेवा निरपेक्षं कृतयेजितानि स्वस्वाम्यनुव्याचाम् । अन्वसधर्मोणे हि मनुष्या भिदुकाः कर्मसु विकृ-  
र्वन्ति । कौटिल्य II. 9; धर्मिष्ठान् धर्मकार्येषु दूरान् संयामकर्मणि । निपुणानर्थकुरेषु सर्वेषु  
च तथा कुर्वन् ॥ निष्पुणमोचर II. 24, 48. Vide a similar verse quoted by the  
सिन्धु on वा. I. 322.

Kautilya's work became the authority on Government and several inscriptions mention officers appointed according to the section on 'adhyakṣapracāra', which is undoubtedly a reference to Kautilya's 2nd adhikaraṇa. For example, in the Belava plate of Bhojavarmadeva (E. I. vol. XII at p. 40) and in the Barrackpur grant of Vijayasena (E. I. vol. XV, p. 283) we have the words 'anyānśca sakalā-rājapādopajīvinodhyakṣapracāroktān ihākīrtitān cāttabhata-jālyān janapadān ksetrakarānśca'. It is not possible to do anything more than indicate very briefly the sphere of each *adhyakṣa*. The duty of the sannidhātṛ (II. 5) is to look after the construction of the treasury house, the store-houses for merchandise, for grain, for forest produce, for arms and of the jail. The samāhartṛ (the Collector-General) is to exercise superintendence over the collection of revenue from forts, the rural parts, mines, embankments, forests, herds of cattle and roads for traffic (II. 6). The samāhartṛ<sup>184</sup> has to divide (II. 35) the kingdom into four districts and to arrange the villages into three grades, viz. those that are exempted from taxes, those that supply soldiers and those that pay taxes in the form of grain, cattle, money, forest produce, free labour and other equivalents for taxes. It is the duty of the *gopa* to look after a group of five or ten villages under the orders of the samāhartṛ. The *gopa* has not only to register the total number of the inhabitants of all *varṇas* in the houses that pay taxes and that are exempt in the villages, but also to keep a register of the number of cultivators, cowherds, merchants, artisans, labourers, slaves, biped and quadruped animals, of the amount of money, free labour, tolls and fines that are recovered, and the number of women, men, young and old persons, and the extent of their actions, occupations, usages, expenditures. The *sthānika* (in charge of each of the four districts) should look after his charge in the same way. The superintendent of records and accounts (*aksapatalādhyakṣa*) should have the account office constructed with its door facing the north or the east, with rooms

184. Both the samāhartṛ and the sannidhātṛ are mentioned as officers in the copperplate of Mahābhavagupta of Trikalīṅga (E. I. vol. VIII, p. 138 at p. 141 and E. I. vol. XI at p. 94). Sabara in his bhāṣya on Jaimini XII. 1. 26 refers to the samāhartṛ coming with his own phalanx of subordinates 'यथा सेनापतिर्वैयवलेन सहगतः समाहर्ता निजेन वलेन राजा ह सर्ववैयवलेनैव'. From Hiouen Thsang's account of his travels (Beal's 'Buddhist Records' vol. I, p. 78) we learn that each province kept a record of good and bad events.



(for the clerks) set apart and with shelves of account books well-arranged (II 7). This officer had to enter numerous matters in the accounts, recover the king's dues from the sureties of servants, to check embezzlement and to recover fines for loss due to neglect or fraud. The account year ended with the full moon of *Āṣāḍha*, the year being of 354 days and the salary for an intercalary month being separately paid. Among the duties of the Superintendent of records and accounts was the important one of noting in his register the dharma, method of judicial procedure and the usages of countries, villages, castes, families and corporations (*daśagrāmajāti-kulasaṅghātānam dharmā vyavahāra-caritra-samsthānam ..... nibandha-pustakasthānam kārayet*). In II 8 Kauṭilya specifies forty modes of embezzlement by Government servants (to which a reference is made in the *Daśakūṁāracarita* VIII). In II 9 he employs the picturesque figure that it is not possible to know exactly how officers appointed to the several businesses of the State extract wealth, just as fish always dwelling in water cannot be observed when they drink water. The superintendent of treasury (II 11) shall in the presence of qualified persons receive into the treasury gems, pearls, articles of great or small value and forest produce (like sandal wood, *aguru* etc.). The superintendent of mines and of government manufactories (II 12) must be proficient in the science of metals, mercury, liquids that ooze from the holes, caves and sides of mountains and hills. Under him are officers called *lohādhyakṣa* (who carries on the manufacture of vessels of copper and other metals), a *lakṣaṇādhyakṣa* (a superintendent of mint, who manufactures silver and copper coins for the State), a *rūpadartaka*<sup>184a</sup> (examiner of coins, who regulates the dealings with paṇas as a medium of exchange among the people and for stocking in the treasury), *khanyādhyakṣa* (who attends to conches, diamonds, pearls, coral and trade in them), a *lavapādhyakṣa* (superintendent of salt). The *suvarṇādhyakṣa* (the superintendent of gold) has to construct a goldsmith's office for the manufacture of gold and silver articles with a single door and four halls, to appoint a skilful and trustworthy goldsmith to have a shop in the centre of the road (II 13) and not to allow any one who is not an employee to

184a. Patañjali in the *Mahābhāṣya* on *vārtika* 4 on *Īn*. I. 4. 52 cites the example 'यद्वति रूपकः कार्यापणम्'. दूर्जयति रूपकं कार्यापणम्'. Here रूपकः appears to mean one who can examine a coin or probably the same as रूपवृत्त in Kauṭ. :

enter the goldsmith's shop. If any one so entered he was to be beheaded. The State goldsmith (II. 14) has to manufacture gold and silver coins for the citizens and rural inhabitants through artisans employed by him. The superintendent of the storehouse (II. 15) has to keep together the produce of crown lands, taxes from the country districts, accidental revenue, manufacture of rice, oil &c. The superintendent of commerce (*paryādhyakṣa*, II. 16) should keep himself acquainted with the demand or absence of demand for and the rise and fall in the prices of various kinds of merchandises produced on land or from water and brought by land or water routes. The superintendent of forest produce (*kūpyādhyakṣa*, II. 17) was to collect forest produce through guards of forest and Kauṭilya gives a long list of trees, varieties of bamboos, creepers, fibrous plants and rope-making material, drugs and poisons, skins of various animals, that came under this officer's care. The superintendent of armoury (*śyudhāgārādhyakṣa*, II. 18) was to employ experienced artisans to manufacture arms, wheels, machines, armour &c. required in battle or for the defence of forts, or for battering the cities of the enemy. The superintendent of weights and measures<sup>183</sup> was to get manufactured weights from half *māṣaka*:

183. The weights specified are: 10 seeds of *māṣa* or 3 *guṇjās* = 1 *suvarṇa-māṣaka*, 16 *suvarṇa-māṣakas* = one *suvarṇa* or *kārṣa*, 4 *kārṣas* = one *pala*, 63 white mustard seeds = one *rāpyamāṣaka*, 16 *rāpyamāṣakas* or 20 *śaibya* seeds = one *dharāna*. The *Nāṭikā* on Pā. II. 4.21 furnishes the interesting item of information that weights and measures (probably in vogue in its day) were first introduced by the Nandas (*nandopakramāṇi mānāni*). The chief measures of distance given in II. 20 are: 8 atoms = one particle of dust thrown up by a chariot wheel, 5 particles = *likṣā*, 3 *likṣās* = a medium-sized *yūkā* (house), 3 *yūkās* = *yava* (barley corn) of medium size, 3 *yavas* = one *āṅgula*, 12 *āṅgulas* = *vitasti*, 2 *vitastis* = *aratī* or one *prājāpatya* hand, 2 *vitastis* plus 4 *āṅgulas* (called *dhanurgrāha*) = one *hasta* used in measuring pastures and cubic measures, 4 *aratīs* = *daṇḍa* or *dhanus* or *nālikā-pauruṣa*, 10 *daṇḍas* = *rajjū*, 3 *rajjus* = *sivariṇa*, 1000 *dhanus* (or 2000 acc. to another reading) = *goruta*, 4 *gorutas* = one *yojana*. A *nivartana* was probably so called because it represented a day's ploughing by a team of eight or six oxen (from the root *art* with *ni*), meaning the area from which they stopped after a day's work. Vide H. of Dh. vol. II, p. 859 note 2021 for *nivartana* and *gocarma*. The extent of the *sivariṇa* differed acc. to different authorities. The *Matsya* said it was 30 *daṇḍas* square, each *daṇḍa* being of the length of seven *hastas*, while *Sāttapa* held the *daṇḍa* to be of 10 *hastas*. The *Līlāvati* (I. 7) held that a *sivariṇa* was 20 *vaṃśas* square, each *vaṃśa* being of 10 *hastas*. According to the lexicon *Vaijayanti*, in Kosala the *yojana* was of four *gavyūtis*, while

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onwards up to one hundred suvarnas, weights being made of iron or stones found in the Magadha country and the Mekala mountain. The superintendent of tolls (*salkādhyakṣa*, II. 21) was to erect near the principal gate of the capital a toll-house and its flag and when traders arrived with merchandise make four or five toll-collectors take down their names, whence they came, what merchandise they brought and whether it bore seal-mark. In II. 22 Kautilya specifies various rates of tolls for imports and exports. The superintendent of weaving (II. 23) was to employ qualified persons to make threads, coats (of armour), cloths and ropes and he was to employ for cutting wool, fibres, cotton, hemp and flax, widows, cripple women, girls, ascetic women paying off fines by doing work, mothers of prostitutes, old women servants of the palace, *devaullāsas* (temple girls) who have ceased to do temple services. This superintendent was charged with the task of providing work for women who do not leave their homes, the wives of persons who have gone abroad, women who are cripple or unmarried and who have to work for their own maintenance. He was to give to them spinning work through the maid-servants in his department. If he stared at their faces when they came to exchange their work for wages or spoke to them on any other matter he was fined in the first amercement. Thus the State helped home or cottage industry. It is to be noted that he had large powers of levying fines and

(Continued from the last page)

in Magadha it was only equal to two gavyūtis (last verse of *śaśādhyāya* in *bhūmikhanda*). Kauṭ. gives hastas of various lengths for various purposes. Compare Manu VIII. 132-134, Viṣṇudharmasūtra IV. 1-7, Yāj. I. 362-363, Nārada parīśeṣa 57-60, Bṛhatsamhitā, 57. 1 ff., Vāyupurāṇa 101. 118 for some of these, which differ in some details from Kautilya's statements. Kauṭ. (II. 20) states the duration of a *nādikā* to be the time required for the passage of one *āṣṭaka* of water from a pot through an aperture of the same diameter as a wire of 4 *āṅgulas* in length and made out of four *suvarnamāśakas*. 3 *nādikās* are equal to a *muhūrta* and 15 *muhūrtas* are equal to a day or a night. In II. 19 he gives measures of corn as follows:—4 *kuḍumbas* = *prastha*, 4 *prasthas* = *āṣṭaka*, 4 *āṣṭakas* = *droṇa*, 16 *droṇas* = *kharī*, 20 *droṇas* = *kumbha*. The *droṇa* differed for various purposes. Vide above (p. 124 note 165) for a quotation from Mll. on Yāj. III. 274. Hemadri, *vratakhanda* pp. 31-37, gives quotations from various sources for measures of time, corn &c. These measures were different in different countries and at different times. The Līlāvati (of 12th century A.D.) I. 7 speaks of the *kharī* in Magadha being equal to 16 *droṇas*. Vide n. 165 above and H. of Dh. vol. II, p. 581 n. 2033 and L. D. Barnett's 'Antiquities of India' (pp. 206-210) for tables of weights and measures.

awarding bodily punishments e. g. if a woman refused to work after receiving the wages he could cut off her thumb. (? or blind up her thumb with the index finger so as to form a pair of tongs). The superintendent of agriculture (śitādhyakṣa, <sup>185</sup> II. 24) himself knowing or assisted by those who know the science of agriculture and the Āyurveda (the ancient lore) of trees was to collect at the proper times all kinds of corn, flowers, fruits, vegetables, bulbe, hemp and cotton seeds and to employ slaves, labourers and prisoners who worked to pay off fines they could not pay, to sow seeds on crown lands. In this chapter he makes interesting remarks about the extent of rainfall viz. the rainfall in a *jūḡala* country (defined above at p. 132) is 16 droṇas, in *amūṣa* (very moist) countries 24 droṇas, 13½ droṇas in the Āśmaka country (modern Khandesh and part of Berar), 23 droṇas in the Avanti country (round about modern Ujjain), an immense quantity in the Aparāntas (west coast of India) and the Himālayan regions.

The superintendent of liquor was to carry on the traffic in liquor and ferments in the capital, the other parts of the country and in army camps by employing men familiar with them, he was to impose a fine of 600 paṇas if any one other than the manufacturers, licensed vendors and vendees sold or purchased liquor, he was not to allow liquor-shops to be opened close to each other, he was to see that liquor was sold in small quantities such as ¼ or ½ of a *kaṇṭhika* or a half prastha to persons of known character in order that (lit. for fear) workmen employed should not cause loss through carelessness, that *ūryas* might not violate the rules of good conduct and that desperadoes should not commit indiscreet acts. Śukra was even more strict as regards

185. ŚITĀ, according to the Amarakośa, means the 'lines or furrow made by the ploughshare'. Therefore Kauṣilya appears to employ the word 'śitā' in the sense of 'land that has been cultivated'. Prof V. K. Ramachandra Dāshīlār (in 'Hindu Administrative Institutions' p. 369) is not right when he explains *सीता लाङ्गुलपद्धतिः* (of Amara) as 'methods and means connected with the plough'. Pūddhati only means the line or furrow made in the field by the ploughshare. Keṭāśawāmi explains as *रचति भुवे सीता हललेखा*. In II. 15 Kauṣilya himself explains 'śitā' as the collection of grain brought in by the superintendent of agriculture '*सीताऽपक्षोपनीतः सत्पर्वकः सीता*'. The śitādhyakṣa appears to have been concerned with crown lands, while the share of crops leviable on lands of private ownership was called 'hāl'. Both these were the concern of the samāhartā as stated in V. 1. (where *śiṣṭa* is said to include *śitā*, *bhūga*, *hāl*, *kara* &c.). When in II. 15 *śitā* and *śiṣṭa* are separately mentioned that is on the analogy of the maxim of *brahmaṇḍaśramaṇa* or of *gobalivarta*.



wine, as he did not allow any one to drink wine in the day-time (IV. 4. 43). The superintendent of slaughter houses (*sūnā-dhyakṣa*, II. 26) was entrusted with the power to regulate the killing of animals for meat and was to impose the highest amercement on those who trapped or beat or killed deer, cattle, birds or fish which were declared to be under State protection or that dwelt in protected forests. The superintendent of nautch-girls (*ganikādhyaṁṣa* <sup>187</sup>) is dealt with in II. 27. The topic of *veśyās* has already been treated of in H. Dh. vol. II pp. 637-639. Kaut. says that a *ganikā* was to be employed for a salary of one thousand paṇas, whether she was born in a prostitute's family or not and she was to possess beauty, youth and accomplishments (i.e. the 64 *kalās* enumerated in Kāmasūtra I. 3. 16). Kaut. prescribes that, if she left the country or died, her daughter or sister took her place and estate or her mother could substitute some other *ganikā* in her place; when none of these existed the king took her wealth and her son did not inherit her wealth. A *ganikā* could purchase her freedom by paying to the king 24000 paṇas as ransom. She was to hold the umbrella, the golden pitcher and the fan for the king when he was seated on the throne or in a chariot or in his palanquin. There were grades among the *ganikās* as best, middling and inferior and salaries differed by a thousand. The sons of prostitutes were to be the chief actors on the royal stage. It appears from these provisions that the *veśyās* were more or less slaves. The superintendent of ships (*nāvādhyakṣa*, II. 28) was to look after the passage of ships not only over the seas and at the mouths of rivers, but also over lakes and rivers in the *sthānīya* (vide above p. 140) and other sub-divisions of the kingdom. Kaut. prescribes that villages on the sea-shore and river banks were to pay a fixed tax, fishermen were to render a sixth part of the haul of fish as fees for fishing licenses and merchants were to pay the customary tolls levied in port towns. This superintendent was to request the ships that touched at a harbour on their voyage to a distant port to pay the toll, he was to destroy pirate vessels bound for the country of an enemy as well as those that violated the usages of the port. The superintendent of cattle (II. 29) was entrusted with the rearing,

187. आभिरम्बुसिक्ता वेद्याः संलस्यन्मुष्णान्विताः । लभन्ते भक्तिकायाश्च स्थाने च जन-  
संभवे ॥ पूजिता सा सर्वो राजा ह्यपरादिभ्यः संस्तुता । गर्वणीयाभिषेक्या च लक्ष्ययुता च  
जायते ॥ कामसूत्र I. 3. 20-21. This shows that every *veśyā* was not a *ganikā*,  
but only one that was honoured for her accomplishments (to 64 *kalās*) and  
who became the cynosure of all eyes.

preservation and care of cows, bulls, buffaloes and the dairy produce. The superintendent of horses ( II. 30 ) was to record the breed, age, colour, marks, groups and places of origin of horses, which were to be classified as those kept in salehouses for sale, those that were recently purchased, those captured in battles, those that were pledged and those temporarily kept in stables &c. Kaut. notes that the breed of horses from Kāmbhoja, Sindhu ( modern Sindh ), Aratta ( western Punjab ) and Vanāyu ( North-west of India ) countries are the best of horses, Bāhlika ( modern Balkh ), Pāpeya, Sauvira ( eastern Sindh and western Rajputana ) and Taitila breeds are of middle quality and the rest are inferior. The superintendent of elephants ( II. 31 ) had to take steps to guard elephant forests and supervise elephants that were in stables, the catching, training and feeding of them, their accoutrements &c. Kaut. devotes one chapter ( II. 32 ) to the training and classification of elephants and medical treatment when they fell III. The superintendent of chariots and that of infantry ( II. 33 ) have the charge of the chariot department and of the six classes of infantry respectively. The superintendent of passports ( *mudrādhyakṣa* ) issued passes to inhabitants of the country or foreigners for entering into or going out and the superintendent of pastures ( II. 34 ) was to see the passes and devote himself to the care of pastures. Kautilya provides that a pass ( *mudra* ) was to be given on payment of a *māṣaka*, that one could enter into or go out of a country only when one had a pass, that a person who entered without a pass was to be fined twelve *paṇas* and that the superintendent of pastures and his men were to examine whether persons not going by the royal road but through pastures had a pass or not and that the superintendent of pastures and his men were to convey the approach of thieves and enemies by beating drums and blowing conches and were to send messages about the entrance of enemies into pastures by means of domesticated pigeons carrying letters bearing the official stamp or by means of smoke and fire. The *nāgaraka* ( the mayor of the capital or cities or the chief of the police in the capital ) was to look to the affairs of the capital ( or the big cities ). A *gopa* ( under the *nāgaraka* ) was to superintend a group of twenty or forty families in the capital and an officer designated *sthānika* was to be in charge of each of four wards into which the capital was to be divided. Yaj. II. 173 mentions an officer called *sthānpāla* in connection with the finding of lost goods who appears to be the same as *sthānika*. The *gopa* and *sthānika* had to keep a register of the caste, gotra,



name and occupation of the men and women in their districts and also of their income and expenditure. Managers of charitable institutions had to send information to them about the heretics and travellers arriving to reside therein. Numerous rules about reporting and punishments for various defaults and wrongs are laid down, which are passed over. Manu VII 121 and Śānti 87, 10 also provide for the appointment in each city (in the kingdom) of a high officer, who was to superintend all matters affecting the city and who had ample powers of restraint and coercion. Many of the superintendents mentioned by Kaṭilya occur under the same names in the Kāmasūtra e.g. gavādhyakṣa, sūtrādhyakṣa, nāgaraka (explained by the comment as dandapāsika), panyādhyakṣa (in V. 5. 7-10). Vide E. I. vol. 15 pp. 127-128 for a statement on the provincial administration under the Guptas.

As regards the emoluments of the officers in charge of a village, ten villages &c. Manu (VII 118-119) has some interesting rules: 'The headman of a village should obtain (as his emoluments) those articles which the villagers have to furnish every day to the king, viz. food, drink, fuel and the like. The officer over ten villages should enjoy one *kula*<sup>188</sup>, that over twenty villages should enjoy five *kulas*, the superintendent of a hundred villages should receive the revenue of one village and the high officer over a thousand villages should enjoy (the revenue of) a town. All this, as Medhātithi says, is only approximate and recommendatory and was not literally followed, but

188. The word 'pratyaham' (every day) excludes taxes on fields that are levied once a year or taxes levied on particular occasions only; while the words 'food, drink and fuel' exclude cattle, money &c. The word 'kula' appears to be used as a technical term. It may mean as much land as would be required for the maintenance of a family. But there is another sense given by the commentators of Manu. Sarvajña-Nārāyaṇa quotes a text that *kula* means 'two halas'. He and Kullūka quote Hārta to the effect that a plough (yoked acc. to dharma) is one of eight bullocks, one of six bullocks is employed by those who want only bare maintenance, householders employ one of four bullocks, while those who in their greed want to incur heavy sin employ a plough with two halas only. So by *kula* is meant as much land as can be ploughed with two ploughs to which either 8, 6 or 4 bullocks are yoked. That 6 or 8 or 12 oxen were yoked to the plough is stated in Atharva VI. 91.1 and Tai. S. V. 2. 5. 2. हस्ते तु द्विगुणं कुलमिति दण्डमाहृद्वाप्यो हलाप्यो वा कृष्यते भूतो मुनीरेवर्षाः। हलमानं च-अहमर्षं धर्महलं दण्डमर्षं जीवितार्थिनाम्। अहमर्षं पृष्टव्यामी द्विगुणं ब्रह्मचारिणामिति हास्योक्तम्। धर्महलं प्राज्ञं पृष्टमाहलं वा। सर्वज्ञानराषण on मनु VII. 119.

only means that a salary commensurate with the position and responsibilities of each officer should be received by him. Vido Śanti 87, 6-8 for rules similar to Manu's (where the officer over a thousand villages gets as his salary the revenues of a śākhānagara). Kautliya (in V. 3) sets out the salaries of many officers and servants as follows: the salary paid to the chief mantrin, purohita and a few others has been already stated above (p. 120); the dauvārika, the superintendent of the harem (antarvainsika), the praśāstr, the samāhartṛ and the sannidhātṛ were to receive 24000 panas; the princes (other than the crown prince), the nurse (mātṛ, mother?) of the princes, nāyaka, the superintendent in charge of justice (or commercial transactions?) in the capital (the pauravyāvahārika), the superintendent of royal manufactories (karmāntika), the members of the council of ministers, the rāṣṭrapāla (governor of a province), antapāla (the guardian of the borders) were to receive 12000 panas; the salary of the heads of śrenis (the military corporations?), the heads of the elephant army, cavalry, and chariot army, and the pradeśtr was 8000 panas; the superintendents (below the commanders) of infantry, cavalry, chariots and elephants, of the forest produce and elephant forests will each receive 4000; the chariot driver (antika), the army physician, the trainer of horses, carpenters, *yonipoṣaka* (?) will receive 2000; the foreteller (the reader of omens), astrologer (who finds auspicious times for undertakings), the reader of purāṇas, the śūta, māgadha (bard), the assistants (paruga) of the purohita and adhyakṣas will receive 1000; trained foot-soldiers, the accountants and scribes will receive 500; musicians 250, but trumpet-blowers will receive 500; artisans (*kāru*) and craftsmen (*śilpin*) 120; servants in charge of bipeds and quadrupeds, workers doing miscellaneous things, attendants near the king, bodyguard and the officer procuring free labour (*viṣṭi*) will receive 60; those appointed to do piece work (*kāryanyukta*, v. l. *āryayukta*), the elephant driver, boys (*mānavaka*, a page?), mountain-diggers, all attendants, teachers and learned men shall receive honorarium (*pūjāvetana*) according to their merit from 500 to 1000; charioteer of the king 1000; spies of the five sorts (vide above p. 129) will receive 1000; the village servants (like washer-man), the spies of the type of sattrin, desperado, poisoner and ascetic women will receive 500; the wandering spies (vide above p. 130) three hundred or more according to the labour involved. The superintendents in charge of a group of hundred or a thousand (servants) were to regulate the subsistence (*bhakta*), cash salary, the perquisites,



the appointment and transfer of those under them. But there shall be no transfer of those who are the king's personal servants and of those who are appointed to guard forts and the country parts. The Śukranitiśāra (I. 211) emphasizes that salaries should be in *pāpas*, that a king should not make a gift even of a finger-breadth of land as emolument to any servant, but that if he does give land, it should be held only for the life-time of the officer<sup>189</sup>. Kautilya (in II. 1) prescribes that lands may be granted as emoluments to superintendents (of the various departments), the accountants, to officers called *gopa* and *sthānika*, to officers in the army, physicians, horse-trainers, but without power to sell or mortgage. Śukra II. 117-204 mentions numerous officers of the army, the treasury &c. Śukra IV. 7. 24-27 sets out the salaries of officers, when the king's income is one lakh of *mudrās* a year. Kautilya provides for pensions and gratuities. He says 'the sons and wives of those that die while on duty shall get subsistence and wages. Young children, aged persons and ailing persons related to the (dying) officers shall be shown favour. On occasions of funerals, sickness or childbirth the king shall bestow money and honours on them'. The Mahābhārata (Sabhā. 5. 54) prescribes<sup>190</sup> that it is the duty of the king to support the wives of those that meet death or calamities in the king's service. Śukra II. 406-411 contains very modern-looking rules about sick-leave, casual leave, pension after 40 years of service &c.

The above provisions from Kautilya's work show how States in ancient India engaged in almost all the activities of modern States, had an equally complicated machinery of administration and an army of high and low officers. It will also be noticed how, as in India at present, comparatively very high salaries were paid to ministers and heads of departments as compared with the salaries of clerks (a. g. the ordinary clerks received five hundred, while the chief minister and *samāhartr*, the

189. न दद्याद्दण्डसुसुतलोपि पुनः स्वावनिर्जनम् । इत्यर्थे कल्पयेद्वापि पावद्दण्डसु  
जीवति ॥ सुणी तावदेवतार्थे सिद्धयेच्च सदेव हि । आरामार्थे एवार्थे वा दद्याद्दण्डा कृद्गुम्भिनम् ॥  
शुकनीलिसार I. 211-212.

190. कश्चिद्दाराण्यशुभार्थां तवार्थं सुपुत्रीपुत्राय । स्वमते चान्युपेतानां विमर्शि  
भारार्थम् ॥ समा 5. 54 : पादुहीनां भुक्तिं स्वार्थे दद्यात् वैमर्शिकी ततः । यच्चरत्सरभूये तु  
न्यूनभित्तयं यथा तथा ॥ वाग्म्यमर्शिकी तु दीर्घार्ते तदुत्तरं न च कल्पयेत् । मेव एवार्थमर्शिक  
द्वारायास्यासि वै भुक्तिः ॥ ... चत्वारिंशत् समा गीताः सेवया येन वै रूपः । ततः सेवां विना  
वसने भूयार्थे कल्पयेत्सदा ॥ ... स्वमितार्थं विनष्टां वसादुवे तद्भुक्तिं वहेत् । पावद्दालोन्मथा  
पुत्रपुत्राय वृष्ट्वा भुक्तिं वहेत् ॥ शुकनीलि II. 406, 407, 410, 413.

collector-general, received respectively 48000 and 24000 i. e. 96 and 48 times as much respectively. If all the different officers mentioned in the works on dharmaśāstra, arthaśāstra and in inscriptions be collected together, they will make a formidably long list. A list from one inscription is set out below as a sample.<sup>191</sup> Vide Vogel's 'Inscriptions from Chamba' pp. 120-136 for explanations of about 30 titles of officers occurring in the inscriptions.

A few words must be said about local administration. The word *grāma* occurs even in the Rgveda. In Rg. I. 114. 1 the poet offers his praise and prayer to Rudra so that he hopes that 'all bipeds and quadrupeds may fare well and all beings in this village may be free from disease and may enjoy prosperity'.<sup>192</sup> In Rg. V. 54.8 'heroes (or men) conquering grāmas' are mentioned (*grāmajito yathā naraḥ*). In Rg. X. 62. 11 Manu is styled 'grāmaṃ' and the bestower of a thousand (cows?) and in Rg. X. 107. 5 it is said that the 'grāmaṃ' who is endowed with (or dispenses) *dakṣiṇā* (cows or wealth) walks in front (of the village people)'. In the Tai. S. II. 5.4.4 it is said 'the prosperous are three indeed, viz. the learned brāhmaṇa, the village headman (*grāmaṃ*) and the *rājanya* (warrior)'.<sup>193</sup> In the Tai. Br. I. 1.4.8, the consecration of fire for a *vaiśya* sacrificer is made with the mantra 'manostvā grāmanyō vratapate vratenādadhāmī' (where Manu is styled *grāmaṃ*). In the Śat. Br. V. 4. 4. 19 the *grāmaṃ* is said to be stronger than his co-sharer (*śajata*). Vide S. B. E. vol. 41 p. 111. We saw above

191. Is the Nābhā grant of Ballālasena of Bengal in E. I. vol. 14 p. 156 at p. 160 we have one of the longest lists of high and low officers. 'परमेश्वर-वरमन्दारक-महाराजाधिपति-श्रीमद्बृहत्कालमेन्देवः कुसली समुप-सत्तेश्वराज-राजन्वक-राज्ञी-राणक-राजपुत्र-राजामातृ-पुरोहित-महाधर्मव्यश-महासाधि-विमलिक-महामेवापति-महाभुवनाधिकृत-अन्तरङ्ग-बृहदुपरिक-महाक्षपदलिक-महावकीर्तार-महामौलिक-महापतिपति-महामण्य-दीक्षाधिक-चौराद्वाराधिक-नीचल-हस्तवन्-नीचलि-राजाधिकादिभ्यापुत्रक-गोमलिक-दण्डनाथिक-दण्डनाथक-विषयपरादीनन्त्याञ्च सकलराज-पादोपकीर्तितोऽथेन्द्राय चारोक्तोनिहाकीर्तितान् बहुभक्ततीथान् जनपदान् श्रेष्ठकरीञ्च ब्राह्मणान् ब्राह्मणोत्तरान् पथार्थ मानयति योषयति समादिशति च । The word 'adhyakṣapracārōkta' apparently refers as said above (p. 143) to the section II on the activities of *adhyakṣas* in Kautilya. Vide appendix for a somewhat exhaustive list of officers mentioned in dharmaśāstra and arthaśāstra works and in inscriptions.

192. यथा शमसत् द्विषदे कृत्यदे विन्धे दुष्टे ग्रामे अमिक्तमातुराय ॥ अ. I. 114. 1.

193a. ययो वै गतञ्जिबः क्षुब्धवान् ग्रामणी राजन्वसेषां महेन्द्रो वैरता । तै. सं. II. 5. 4. ५.



(p. 111) that among the *ratnins*, grāmanī (the village headman) was one. Grāma did not necessarily mean a village but may have been applied to a town (though not a capital). The headman of a village was called grāmanī, grāmika or grāmādhīpati (in Manu VII 115-116, Kauṭ. III 10), grāmakūṭa (in inscriptions e.g. E. I. vol. VII p. 39 of śaka 853, E. I. vol. VII p. 183, 188) and Paṭṭakila, modern Patil (in Ujjain plates of 975 and 1023 A. D. in I. A. vol. 6 p. 51, 53, vol. 18 p. 322 grant of Bhoja in *śahat* 1076, I. A. 16 p. 254, E. I. vol. XI p. 304, 310 of *śahat* 1176). In an inscription of the 13th century from the Poona District we have the form 'paṭṭela' (E. I. vol. VII at p. 183). The word 'gāvunda' for a village headman in the Canarese Districts is derived from grāmakūṭa (E. I. vol. VII p. 183). Paṭṭhinasi<sup>193</sup> quoted by Aparārka p. 239 states that the food of a grāmakūṭa could not be partaken by a brāhmana. The Gāthāsaptasatī frequently refers to the great influence of the grāmanī and the love adventures of his son in the village (I. 30-31, VII 24). The Kāmasūtra states (V. 5.5) that the young son of a grāmādhīpati had certain women of the village at his beck and call.<sup>194</sup> According to the Śukranītisāra I 193 a grāma (village) is one krośa in extent and yields a revenue of one thousand silver karṣas, while half a village is called palli and half of palli was kumbha. Hemādri in Dśnakhaṇḍa (p. 288) quotes from the Mārkaṇḍeya-purāṇa definitions of pura, kheṭa, kharvaṭa and grāma. Yaj. II 167 makes a distinction between grāma, kharvaṭa and nagara (town) as regards the extent of the pasture lands to be preserved round them. Baudhāyana Dh. S. II 3. 58 and 60 condemns residence in a city for a religious brāhmana where the body is covered with dust which enters one's mouth and eyes and recommends for residence a grāma abounding in water, fuel, fodder, fuel-sticks, kuśa grass, flowers, which is full of well-to-do people, endowed with industrious people, where the majority are āryas and which cannot be entered by robbers. In the Saṁhāra 5.84 five officers of a village are referred to. It appears that from being a very high officer (a ratnīn) in Vedic times the grāmanī was reduced in his influence, came to be appointed by the king alone and the office became hereditary and could be given permanently. Vide

193. पैठनीसिः । साधनसिद्धिपण्डितश्रीमान्मुद्राङ्क विषय । अपारार्क p. 239.

194. ग्रामाधिपतेराहुतकारय हलोत्पदुत्तिष्ठन्त्य दूतो ग्रामीणयोचितो वचनमात्रज्ञाप्यस्ताभ्यर्चय्य दृष्टवाचसते विदः । कामन्द्य V. 5. 5.

E.I. vol. VII, p. 177, 188, 189<sup>192</sup>. The Śukranitisāra (II 120-31) states that there were to be six officers in a village and (II 428-29) prescribes their caste, viz. sāhasādhipati (i.e. a magistrate to deal with wrongs involving force) was to be a kṣatriya, grāmanetr (the headman) a brāhmana, bhāgahāra (the person collecting the state land revenue) a kṣatriya, lekhaḥa (a scribe, corresponding to the modern *kulkarni* in the Deccan) should be a kāyastha, śulka-grāha (the toll-gate keeper) a vaiśya, pratihāra (the guard at the gate of the village wall) a śūdra. Śūkra (in II 170-175) sets out their duties. The headman was to be alert in protecting the villagers like their parents from thieves, robbers and from the State officers; the bhāgahāra was to devote special care to the tending of trees; the lekhaḥa was to be skilled in accounting and proficient in several spoken languages; the pratihāra was to be of strong body, proficient in arms, humble and to call the villagers with the respect due to each; and the toll-gate keeper was to levy tolls in such a way that sellers did not incur loss of capital spent by them. From Kauṭ. III 10 it appears that the village headman had the authority to inflict fines in certain cases e.g. when the headman (grāmika) had to travel on some business of the whole village the villagers were to accompany him by turns, but if they failed to do so they had to pay a fine of one paṇa or a half paṇa. Similarly, if a villager does not co-operate in the getting up of a show (prekṣā) in the village, he or his people would not be allowed to see the show and he was to be fined if he clandestinely saw it. In villages, particularly in Karpātaka and South India and in brahmadeya grants (to learned brāhmanas) the village assemblies (sabhā) carried on local administration. From the Kotayumachgi Inscription of Calukya Vikramāditya V dated śaka 934 (1012 A. D.) it appears that Ummachige was a great educational centre in the 11th century and 104 Mahājanas of the village were entrusted with the proper conduct of worship in the temple, the imparting of education, the feeding of ascetics, the supply of water to the village and the punishment of criminals (E. I. vol. 20 p. 59). Vide Gopalan's 'History of the Pallavas of Kāñci' pp. 93, 153-157 for the working of the village assemblies (sabhās) from the 9th century onwards, but as he observes (p. 154), 'we do not know the nature of the rules that regulated their working, their exact sphere of action and their

192. अथ ग्रामरथ ग्रामकृत्यं कल्लाम्बाजजकुतुमावुपाय दत्तं शास्त्रम् (E.I. VII p. 177 at p. 188 (grant of Eastern Calukya Amma dated 945 A. D.).



relation to the central government.' An inscription of king Parāntaka I (907-947 A. D.) at Uttaramerūr deals with several classes of village committees that were appointed by vote (Annual Report of Archaeological Survey of India, 1904-5 pp. 131 ff.). Five committees, viz. annual committee, garden committee, tank committee, gold committee (for currency or for collecting taxes in cash), *pañcavāra* committee, are described and reference is made to a sixth called 'justice committee' and the mode of election and the qualifications and disqualifications of members are described in detail (pp. 142-145). Prof. Nilkanth Sastri in 'Studies in Cola History' (pp. 131-175) publishes the text of two Parāntaka Inscriptions with English translation and exhaustive notes. Vide also E. I. vol. 22 p. 5 for resolutions of the sabhā at Manūr to be followed in future meetings, the qualifications in property, education and character of the members &c., E. I. vol. 24 p. 28 about the regulations of sabhā from two Uttaramallūr Inscriptions and E. I. vol. 23 p. 22 for a note on the *pañcavāra* committee. For village communities as described in Buddhist works in the 7th century B.C., vide Rhys Davids in 'Buddhist India' pp. 45-51. It appears from Pāṇini and the commentary Kāśikā thereon that certain craftsmen were attached hereditarily to the village, were probably paid a certain part of the crop produce yearly for their services and corresponded to the modern village servants (called the twelve *balutedārs*) in the Deccan. For an account of these *balutedārs*, vide Grant Duff's 'History of the Marathas' (Bombay ed. of 1863, vol. I pp. 23-27). For example, Pāṇini (VI 2. 62) teaches the accent of a compound word formed from 'grāma' with another word denoting 'śilpīn' (craftsman), such as grāmanāpita (village barber) or grāmakulāla (village potter), which are two examples given by the Kāśikā on this *sūtra*. From Pāṇini V. 4. 95 ('grāmakautābhyāṃ ca takeṇaḥ') it may be inferred that a carpenter also was a village servant as in modern times in the Deccan. Brhaspati<sup>196</sup> contains very

196. ग्रामश्रेणिकानां च संकुलः समपक्रिया । पाषाकाले तु सा कार्या धर्मकार्ये तथैव च ॥ इति जपः पञ्च सा कार्याः समूहानिवादिनः । कर्तव्यं चत्वनं तेषां ग्रामश्रेणिकादिभिः ॥ समापपदेवग्रहणामारामसंस्कृतिः । तद्वानाचद्विद्यायां संस्कारो पञ्चपक्रिया ॥ कुलापन- निरोधे च कार्यमस्याभिरक्षणः । पथेवलेखितं यत्ने धर्मो वा समपक्रिया ॥ पाहवीया समस्तेस्तु कः समर्थो निमंत्रदेव । संप्रत्यहर्णं दुष्टास्तस्य निवर्तनं दुष्ट ॥ इत्युच्यते quoted by अपरायण pp. 792-93, स्तुतिचः II. 222-223, च. व. p. 332. The latter reads कुलापननिरोधश्च and states that कल्पदेव read कुलपापनिरोधश्च meaning 'start- ing water courses and stemming them'. अपरायण omits the half कुलापननिरोधे च &c. The word कुलाः is variously explained by the digesta.

important information about local administration in villages. A compact formed among villages, guilds and corporations (*gana*) is called a *samaya* (agreement); such an agreement must be observed in times of distress and for acts of dharma. Two, three or five persons shall be appointed as advisers of groups; their advice shall be followed by the villagers, the guilds, the corporations and others. Examples of agreement as to times of distress are: When there is drought, there may be a compact that for the performance of a sacrifice to the planets or the like each field or house should contribute so much money or when there is trouble from robbers, each house should send one able-bodied and armed man. Then examples are given by Brhaspati himself about acts of dharma. The village people should put down in writing what work they are going to do, such as the repair of a house for their assembly, a shed for distributing water to travellers, a temple, a tank or a garden, the performance of the necessary *samskāras* (*upanayana* or funeral rites) of the poor and helpless, gifts for the performance of sacrifices, prevention of famine-stricken groups of families from coming. Such conventions would be proper and should be respected by all the villagers. Whoever being able to carry out such agreements violates them should be punished with loss of all wealth and banishment. Brhaspati further says<sup>197</sup> that the heads of families, guilds and *ganās* and the inhabitants of towns and forts may pronounce the two punishments of reprimand and condemnation against wrong-doers and may also excommunicate them and the punishments and favours declared by them according to rules should be approved of by the king, since such power is regarded by the sages as delegated to them. For ejecting out of the village one who is not guilty of theft or adultery with another's wife the village headman or the village was liable to pay, according to Kātyāyana III, 10, a fine of 24 *paṇas*. It will be seen from what has preceded that village administration was self-contained and would function whatever Government might happen to be at the centre. The central Government did not very much interfere with local administration, except in the matter of land revenue, protection against invasion and exercised only general control and supervision. The village communities were miniature states.

197. कुलभोजिगणाध्यायः ब्रह्मनिवासिनः । वाग्धिद्वये परिपालनं नकुर्वुः पापकारिणाश्च । तेऽहं च स्वधर्मेन निग्रहाद्ययम् वृणात् । तद्वाङ्मोक्षकुलमन्ये निग्रहाद्यां वि ते स्तुताः । वृणस्वति quoted by अपराक p. 794, स्तुतिच. II, p. 225, सरस्वतीविलास p. 329. There are some slight variations.



There was a great deal of decentralization or devolution of authority from the central government to the village committees and authorities. They were also entrusted with civil and criminal justice, as we shall see later on. For further details on the organization of a village as a political unit, Dr. R. C. Majumdar's 'Corporate life in Ancient India' chap. II pp. 135 ff. and Fick (p. 161) may be consulted. Just as there was some organization in villages in general, so also guilds (*śrenis*) and groups (*gaṇas*) had their own regulations and conventions. In XI.1 Kauṭilya refers to *kṣatriya* guilds in the countries of Kambhoja and Surāstra that maintained themselves on husbandry and followed the profession of arms (vide above p. 88 n. 120). In III. 14 he refers to guilds of workmen or labourers (*saṅgha-bhṛtāḥ*). Manu (I. 118) declares that his work deals not only with the enduring dharma of countries, castes and families, but also with the dharma of heretical sects (*pāṣaṇḍa*) and of groups (*gaṇa*). Manu (VIII. 41) requires the righteous king to consider carefully the dharma of castes, countries, guilds and families (to find out whether they are opposed to the Vedas) and uphold those dharma (that are not opposed) as binding (on those respective persons). Yāj. II. 192 prescribes that the king should respect the usages and conventions of occupational guilds, merchants, heretical sects, and groups (corporations &c.) and allow them to pursue the course of action they had followed from ancient times. Nārada (*saṃnyāsanupākarma*, verses 2-6) and Bṛhaspati quoted in the *Vṛamitrodaya* (*vyavahāra*) contain very important directions as to what conventions of guilds the king should respect and what he is not bound to respect. Nārada says that the king should enforce the conventions agreed upon by heretic sects, *saṅghas* (merchants), *śrenis* and other groups residing in the country or the capital. The king may allow them to follow their special rules (e.g. speaking the truth), their special actions (begging in the morning without having taken a bath), their mode of meeting (on hearing a drum being beaten), the means of livelihood they have been used to (e.g. dressing as an ascetic). But the king should prohibit (out of their usages and conventions) such as are opposed to the king's interest, or are disapproved of by the people in general, would be ruinous to the purposes of the king. The king should not tolerate their creating factious groups among themselves, taking up arms for a purpose detrimental to the State, and causing injury to each other. The king should specially curb those who cause dissensions among the several

groups; if they are connived at in these activities they might cause terrible danger.<sup>198</sup> A good deal has already been said about guilds and corporations in H. Dh. vol. II pp. 66-69. Among inscriptions, the following may be studied: the Nasik Ins. No. 15 of the time of Ābhira Īśvarasena (E. I. vol. VIII p. 88, where the *śrenis* of potters, oil-pressers and water-drawers receive deposits), Junnar Buddhist cave Inscription (A. S. W. I. vol. 4 p. 97, where a deposit of money with *śrenis* of bamboo-workers and braziers is made), Gupta Inscription No. 16 p. 70 (an endowment was entrusted to the guild of oil-men, whose head was Jivanta), Gupta Inscriptions, No. 18 p. 79 (silk weavers from Lāta coming to Daśapura and building a Sun temple), E. I. vol. 15 p. 263, E. I. vol. 18 p. 326 and p. 30, E. I. 16 p. 332, E. I. vol. I. 155 (of 933 *śrenis*, inscription at Gopagiri, modern Gwalior, where the guilds of oil-millers and of gardeners are mentioned), I. 184 (Pehoa inscription, where a guild of 34 horse-dealers from different countries, some being brāhmanas, agreed to impose upon themselves and their customers tithes to be distributed to certain temples). Rhys Davids in 'Buddhist India' (pp. 90-96) gives a list of the 18 guilds that probably existed in the times of the early Buddhist works (though two or three of them are of doubtful existence) and the number of which (18) is sometimes mentioned in the Jātakas (as in Mūgapakkhajātaka No. 538, vol. VI p. 14 in Cowell's tr.). For further details about the working and organization of guilds, vide chap. I of Dr. R. C. Majumdar's 'Corporate life in ancient India', and 'Indian Culture' vol. 6 (for 1940) pp. 421-28 (on the economic guilds of blacksmiths, barbers &c. in the Kuśāpa period).

In numerous places rules are laid down about the qualifications of the ordinary servants (*parivāra*, *bhṛtya* or *anujyāin*) of kings, how they should conduct themselves, how servants should

198. पावण्डिनैमनश्रेणीपूजनात्मगणादिषु । संश्लेखमयं राजां दुर्मे जनपदे तथा ॥ यो धर्मः कर्म यज्ञैर्वाहपस्थानविधिषु च । यज्ञैर्वा हुपुपादानमनुमन्वेत तत्तथा ॥ नायकैर्ल च यज्ञाज्जा म्हरपयमर्तं च यत् । वाचकं च यद्वाचां तत्तमेयो विनिर्णयेत् ॥ मिथः सङ्घातकरण-महितं ब्रह्मधारणम् । परस्परप्रेषार्तं च तेषां राजा न मर्चयेत् ॥ पृथग्गणांश्च ये भिन्नयुक्ते विनेषा विरोधतः । अत्रावेयुर्नयं चोरं स्वाधिकृते ह्यपेक्षितः ॥ नारद (समवसरानुवाकम् 2-6). In the Amraoti Inscriptions (E. I. vol. 15 p. 263) we find the words धन्वजकटकस निममस (of the trade guild of Dhanyakaja). This place is variously identified (vide E. I. vol. 20 p. 9). The अमरकोश holds that नैमस and वणिज् are synonyms. विश्वरूप on वा. II. 192 explains 'नार्थ-वाहादिसमूहो नैमसः'. अपरार्क p. 796 explains 'सर्वं देशांतरवाणिज्यार्थं ये नागा-आदीना अधिगच्छन्ति ते नैमसाः'.



find out whether the king is pleased or displeased with them. Vide Kautilya V. 4, Virāṭaparva 4. 12-50 (where the refrain of most verses is 'sa rājavasatim vaset'), Matsyapurāṇa 216 (the whole of which is quoted in the Rājadharmakāṇḍa pp. 24-27 and in the Rājantīprakāśa pp. 189-192), Agnipurāṇa 221, Viṣṇudharmottara II. 25. 2-28, Kām. IV. 10-11, V. 1-4, 6, 9, 11-63 (most of which are quoted in the Rājantīratnākara pp. 51-58), Śukranītiśāra II 54-68, 205-253. On the word 'akṣudrapariśad' occurring in Yāj. I. 310 (where the Mit. has the reading 'akṣudroṣpariśad') Viśvarūpa quotes a passage from Śāṅkha<sup>199</sup> 'a haṁsa (swan i. e. a good king) surrounded by vultures (greedy servants) is not desirable, but a vulture (i. e. a greedy king) surrounded by haṁsas (servants of spotless character) may be preferred.' The Rājantīprakāśa (p. 185) quotes the same passage from Śāṅkha-Likhita with an addition viz. 'faults arise from those who surround the king and such faults are enough to ruin (the king). Therefore the (king) should first (before engaging his servants) put down in writing whether servants are endowed with learning, character and good family.' Śakra inculcates loyalty on servants in the following remarkable<sup>200</sup> words 'one should not forsake a good master when he is in adversity. Should not one always and quickly desire the welfare of one's protector whose salt (lit. food) one has eaten with honour even once' (II. 246-247)? This sentiment pervaded most Hindu servants in ancient and medieval times, even under foreign rulers professing a different religion. The Rājantīprakāśa p. 176 quotes a fine verse from the Garuḍapurāṇa as to matters to be principally considered in selecting servants, which are four, viz. education, character, family and

199. तथा च शङ्खः । न हंसो दुष्टपरिवारः कामं तु शुभो हंसपरिवारः स्वात् । निष्कल्प on वा. 1. 305 ; शङ्खलिकितौ । न शुभपरिवारः स्वात्कामे शुभो राजा पेपात्र हंसपरिवारो न हंसो शुभपरिवारः । परिवारादि दोषाः पादुर्मनसि तेऽत्र विनाशाय । तस्मात्तुर्मनसि तत्परिवारं लिखेच्छुलङ्घनीयान्वयोपपन्नम् । राजनीतिव. p. 185. This quotation seems to be corrupt. We have probably to omit the word न before हंसपरिवारः. In बसिष्ठ XVI. 21-26 (Führer's ed. of 1916) we have a very similar passage, but it is corrupt. Vide राजधर्मकाण्ड p. 22 for the same passage ascribed to शङ्खलिकित. The पञ्चतन्त्र has a similar verse of same sense (I. 302) 'शुभाकारो मे गेयः स्वाद्वैसाकारैः सनातदैः । हंसाकारोऽपि संवाच्यो शुभाकारैः स मेऽर्थः ॥'

200. आपदुपगतं सुभर्तारं कदापि न परित्यजेत् । एकवारमप्यभितं वरपात्रं ह्यादरेण च । तद्विदं जित्वेजित्वं पालकस्याजसा न विद् ॥ शृङ्ग. II. 246-247.

actions, just as gold is tested in four ways, viz. by weighing it or by rubbing it (on a touchstone), by cutting it and by heating it.<sup>301</sup>

Some responsibilities of the Government or king in ancient India towards the people will now be dealt with. From Kautilya (II. 29 and II. 34) we find that the State made great efforts for the rearing of cattle, made stringent rules for their protection and for the provision of pastures. Manu VIII. 237, Yaj. II. 167, Matsya 227, 24 also make provision for pastures round villages, towns and cities. Kautilya requires the superintendent of cattle to classify cattle as calves, steers, tameables, draught oxen, bulls to be yoked, stud-bulls, bulls meant for carts, cattle meant for meat and buffaloes meant for carrying loads or for being yoked, pregnant cows, milch cattle &c. and to mark them and note in a register of beasts the branded marks, natural marks, colour, the distance between the horns. He prescribes corporal punishments and fine for those who unauthorizedly kill or steal cattle or incite others to do so. He prescribes even the amount of fodder, oil-cakes, bran and salt on which different kinds of animals put to different kinds of work are to be fed. From the Mahābhārata also we learn that even princes<sup>301a</sup> went to supervise and enumerate the herds of cattle belonging to the State. Vide Vanaparva 239. 4 and 240. 4-6. Even such a grammatical work as the Mahābhāṣya incidentally gives expression to the view that a country's wealth consists in its food-crops and in abundance of cattle.

We saw above (pp. 130-131) that spies were to be employed (acc. to Kāu.) to test whether State officers took bribes. Yaj. (I. 336, 338, 339) prescribes that the king should protect his subjects from the harassment caused by *kūpisthas* (the accountants and scribes), that he should ascertain the doings of the State officers through spies, honour those that are well-conducted and severely punish those who are badly behaved and should deprive those who take bribes of their wealth and banish them from the country. Vide also Manu VII. 122-124 and Viṣṇuśarmottara for similar rules. The Pāṇcatantra (I. 343) has the same verse as

301. गन्धदुराणेभिः पथा अक्षुभिः कान्तैः परीक्षते तुलाकण्टेह्यन्यथापणेन । तथा च द-  
भिर्भूतकाः परीक्षते अनेन अतिरेक कुलेन कर्मणा ॥ राजनीतिम्. p. 176. This is गन्धदुराण  
112. 3 with slight variations.

201a. स्मरणे सनयः शानो वन्यायाभावि चाकुलम् । सनयं 239. 4, on which  
नीलकण्ठ explains 'स्मरणदेवो कर्मणि यथा संकषादूर्ध्वो यथावर्णजालिनाम्' लेखने ।  
अर्थवानयं वेदा उपपत्ते यस्मिन्मायः सस्यानि च वर्तन्ते । महाभाष्य, vol. II, p. 401.



Yaj. I. 336 (except the last pāda). Medhātithi on Manu IX. 294 remarks that the kingdom has no fear of ruin if kaptakas (wicked people who are like thorns) are removed and justice is properly administered and that kaptakas are generally under the protection of the queen, the prince, the king's favourites or the commander-in-chief.

Great attention was paid to agriculture. In the *Saṃhāparva* 5. 77 the king<sup>202</sup> is advised to have large tanks in different parts of the country full of water and to see that agriculture did not depend on the rains alone. Megasthenes (Fragment I. p. 30 of McCrindle's work) notes that the greater part of the soil of India was in his day under irrigation and consequently bore two crops in the year. Even from the *Tai. S. V. 1. 7. 3* it appears that two crops were grown in the year (*tasmād dvih samvatsarasya sasyam pacyate*). The *Vaj. S. 8. 18. 12* contains a list of twelve different kinds of crops such as rice, *gana*, wheat, *māṣa*, sesame, *mudga*, *masūra* &c. and the *Br. Up. VI. 3. 13* enumerates ten kinds of grain (*grāmyāṇi dhānyāni*). In the Hathigumpha Inscription of Kharavela king of Kalinga (E. I. vol. 20 p. 71) it is stated that (p. 79) a canal which had already been opened in the 103rd year of the Nanda kings (i. e. in the 4th century B. C.) was extended by him in the 5th year of his reign. Rudradāman at great expense from his own treasury without any additional taxation or demand for free labour restored the famous Sudarśana lake near Junāgaḍ (E. I. vol. VIII. p. 36) that had been built by the Governors of Candragupta and Asoka and been breached by floods. Irrigation had been made use of from Vedic times. *Rg. VII. 49. 2* refers to rivers and springs naturally flowing and to channels that were dug up. South Indian Inscriptions show how the Pallavas and kings of other dynasties built tanks which were named after the kings themselves or after some distinguished chief of the locality and that are in existence even now. Vide S. I. I. vol. II part III, p. 351, E. I. vol. IV p. 152 (mention of tank called 'parama-ēvaratātaka'), S. I. I. vol. I p. 150, E. I. vol. VIII p. 145 (for mention of *rājatatāka* near which four *nivartanas* were granted by Carudevi). The great engineer Suyya under Avantivarman of Kashmir (833-858) successfully dammed the river *Vitastā* with the result that a *khāri* of rice which could formerly be purchased for 200 *dināras* could be had after the great irrigation

202. कञ्चिद्वष्टे तद्विधानं यथास्ति च कुर्वन्ति च । भाग्यो विनिविद्यमानं न कुर्वन्ति-  
मातृका ॥ समा 5. 77.

work for 36 *dināras* ( vide *Rājatarāṅgiṇī* V. 84-117.). Kautilya (II. 24) refers to the various ways in which crops could be raised with water and the revenue to be demanded in each case, e.g. those who watered crops with manual labour had to pay 1/5th of the produce, those who carried water on their shoulders paid 1/4th, those who watered their crops by means of water-lifts or water-wheels from natural springs paid one-third and those who raised water from rivers, lakes, tanks and wells paid 1/2th. He notes that sugarcane crops are a heavy responsibility, as they are liable to many evils and entail great expense. Sugarcane had been grown even in the times of the Atharvaveda (I. 34. 5). The *Śukranṭisāra* (IV. 4. 60) remarks that the king should see to it that there is plenty of water in his kingdom by digging wells, wells with steps, tanks, lakes &c. Megasthenes (fragment XXXIV p. 86 of McCrindle's 'Ancient India') says that some superintend the rivers, measure the land as is done in Egypt and inspect the sluices by which water is let out from the main canals into their branches so that every one may have an equal share of it. Kaṭi (IV. 3) devotes a special chapter to the king's duty to save the kingdom from national calamities, viz. fires, floods, diseases, famines, rats, wild elephants (or beasts), snakes and evil spirits. He gives practical hints for human and religious remedies and rites against these calamities. The measures against famine suggested by him are: the king may provide the people with seeds and food, start works for those who are distressed, distribute either his own collection of provisions or that of the rich or call for help from his allies, tax the rich and make them disgorge their wealth, migrate to other countries that have abundant harvests. National calamities are called *hi*, which are six: excessive rainfall, drought, rats, locusts, parrots and too close presence of foreign kings<sup>203</sup>. The work of Kāmandaka states that calamities are either divine or human and that the first are of five kinds. In another place he gives a longer list of calamities. There are several references in ancient and mediæval works to severe famines. In the *Chāndogya Upaniṣad* I. 10. 1-3 we

203. अविशुद्धिनाशुद्धिर्मुपकाः शलभाः शुक्राः । अमलकाश्च राजानः । दहेता इत्यपि शुक्ताः ॥ हरिश्चामी ०० अमरः, and राजनीतिमहाश p. 447; compare इत्यपि न मन्त्रि मे । उद्योगपर्व ६१. १७ : हृताशने । अलं व्याधिर्दुःमिहं मरकास्तथा । इति पञ्चविधं देवं धर्मेण नाशुर्वं परम् ॥ काम. १३. २० = बृहस्पत्य p. ६० v. ३२९ : अविशुद्धि...शुक्राः । अमलकरश्च दुष्पथ परचक्राणि मरकाः । राजनीतिकविप्रसंगे मरकत्वाधिपतिवत् । पशुनां धर्मेण सेवी राष्ट्रवत्समस्तुपपत्ते ॥ काम. १३. ६३-६४ = बृहस्पत्य p. ५९ verses ३२२-३२३.



have the story of Uṣastī Cakrāyana who took from another's plate *kulmāṣas* that the other had been eating (i.e. he took *ucchiṣṭa* food), when the country of Kurus was overwhelmed with a shower of hail (or by locusts). The *Bālakāṇḍa* (chap. 9) refers to a famine in the country of Anga under Romapāda. The *Nirukta* II. 10 refers to a drought in the dim past for twelve years in the kingdom of Śāntanū. A Mauryan inscription from Mahāsīhāna (ancient Puṇḍranagara) shows that Gaṇḍaka coins were distributed and also corn to famine-stricken people (J. A. S. B. for 1932 p. 123). The Sohagpur Copperplate Inscription (of Mauryan times) contains an order of the mahāmātras of Śrāvastī that the *dhanyas* storehouses were to be spent only in case of drought. Vide *Annals of B. O. R. Institute*, vol. XI p. 32ff., E. I. vol. 22 p. 1 and J. A. S. B. vol. VII (for 1941) part 2 p. 203. The *Rājatarāṅgiṇī* records several times the occurrence of famines in Kashmir at different periods (e.g. vide II. 17-54, V. 270-278, VII. 1219 ff.). The *Maṇimekhalai* (chap. 28) speaks of a famine for twelve years at Kāñel in South India. There was a terrible famine (called the famine of Durgādevī) for twelve years in the Deccan about 1396 A. D. (vide Grant Duff's 'History of the Marāṭhas' vol. I. p. 43). Vide E. I. vol. 15 p. 12 for a reference to a severe famine in *śaka* 1313 when paddy could not be had even at the rate of ten nāllis a paṇam.

It has been shown (in H. Dh. vol. II. pp. 113, 369, 856-858) how it was the king's duty to support learned brāhmaṇas, to hold assemblies of poets and learned men, to make gifts of land to educational institutions and to promote learning in all ways. *Vṛddha-Hārta* VII. 229-230 says that only learned brāhmaṇas who are endowed with *tapas* are proper objects of the king's bounty. Some emperors like Harṣa went far beyond what was reasonable. The Chinese pilgrim tells us (Beal's 'Buddhist Records &c.' vol. I pp. 214, 233) that at the end of every five years Harṣa held an assembly (*pariṣad*) at Prayāga and gave away all in charity. The *Śukranītiśāra* (I. 368-369) holds that a king should be on the look-out for educated men, should appoint them to offices suited to their education, should honour every year those who have attained eminence in learning and the arts and take measures for the advancement of learning and arts. It has already been shown how this had been followed by ancient and medieval Indian kings to the letter. A comparison with the British Indian Government in the 18th century and the first decades of the 19th will be highly interesting. After the battle of

Plassey in 1757 the British East India Company got three such rich provinces as Bengal, Bihar and Orissa. During over 50 years the only thing that was done by the ruling power for the encouragement of learning among Indians was that in 1780 Warren Hastings started a *Madrasa* of Muslim religious learning at Calcutta with a *moulvi* and 40 stipendiaries and Lord Cornwallis founded a Sanskrit college at Benares in 1792. When the East India Company's Charter was renewed in 1813 the only provision that was made for education and encouragement of learning (by George III, 1813 chap. 155, clause 43) was 'that it shall and may be lawful for the Governor-General-in-Council to direct that out of any surplus which may remain of the rents, revenues and profits arising from the said territorial acquisitions, after defraying the expenses of the military, civil and commercial establishments and paying the interest of the debt, a sum of not less than one lakh of rupees in each year shall be set apart and applied to the revival and improvement of literature and the encouragement of the learned natives of India and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India'. Detailed comment is not called for. More than 50 years after British rule began, when at least half of what is British India now had come into the hands of the British, and when the yearly income must have been many crores of rupees, the sum of a lakh of rupees was to be set apart for education of two kinds (Eastern and Western) in the whole of the then British India. Further this provision was not compulsory but only permissive, and was to be availed of only if some surplus was left after everything else had been provided for.

As in western Jurisprudence, so in India the king was looked upon as *parens patriæ*, the protector or guardian of all minors. Gaut.<sup>204</sup> X 48-49 and Manu VIII 27 prescribe that the king shall protect the property of a minor until he attains majority or until he returns from his teacher's house. Medhātithi on Manu VIII 27 says that the minor's relatives like the uncles may contend that one of them is the guardian of the minor's property but it is the king who is to see that the minor's property is kept

204. स्वर्गं बालधनमायवहारमपणात् । समावृतेर्वा । यौ. X. 48-49; रक्षोद्वान्ना बालानां धनान्यवसायवहाराणां ओचित्यवीर्यवर्त्तनीयम् । ब्रह्मसिंहित q. 12 वि. १. p. 598; बालधने राजा स्वधनवत्पारपालनीयम् । अन्वयाः पितृपदादिवाग्यथा मतेदे रक्षणीयं मतेदे रक्षणीयमिति विचक्षेत् । मेघा. on मनु VIII. 27. On मनु VIII. 28 he remarks यः कश्चिदुनायकत्वं सर्वस्य धनं राजा पमावत् परिरक्षेत् । तथा श्रीवाल्म्येनायं वशाद्व्ययः ।



safe. Baud. Dh. S. II. 2. 43, Vas. 16. 8-9, Vigra Dh. S. III. 65, Śāṅkha-Līkhita contain a similar rule. Nār. (śrādhāna 35) declared that a person was a minor till the 16th year. Manu VIII. 28-29, Viṣṇudharmasūtra III. 65 extend the same rule and say that the king must take care of barren women, women who have no sons, women whose families are extinct, wives and widows who are faithful to their husbands and of those who are afflicted with disease. Nār.<sup>205</sup> as quoted by Medhātithi says that if a woman has nobody in her husband's or father's family to protect her, then it is the king who is to protect her. Kauṭ.<sup>206</sup> (II. 1) makes it a duty of the elders of the village to take care of and increase the properties of minors and of temples.

It was the special concern of the king to see that proper weights and measures were used. Kauṭ. (II. 19) as stated above (pp. 145-146) provides for a special superintendent of weights and measures. Vas.<sup>207</sup> (19. 13) and Manu VIII. 403 provide that all weights and measures must be duly marked (or stamped), that once in six months they must be re-examined and that the weights and measures for objects required by the class of householders must be guarded against falsifications. Yaj. II. 340 and Viṣṇudharmasūtra V. 122 prescribe as punishment the highest amercement for those who fabricate false balances, edicts, measures and coins and also for those who use them in their transactions. The Nītivākyaṃṛta (p. 98) requires the king to be vigilant as regards merchandise, balances and measures, since there is none who excels traders in stealing people's money before their very eyes.<sup>208</sup> Vide Alberuni (tr. by Sachau) vol. I chap. XV about weights and measures current in India in the 11th century.

Another important responsibility of the king concerned thefts. Aśvapati, king of Kekaya, boasted that in his kingdom there was no thief, no close-fisted person, no drinker of wine,

205. विनिर्वाणान्नराणां भरणे च स ईश्वरः । परिकीर्त्तये गतिकुले निर्ममस्य निराश्रये ।  
तस्य निष्क्रेषु वाऽमस्य विपुलाः यथा श्रियाः । यथाह पाण्डिते तु राजा भर्ता यक्षः श्रियाः । quot.  
ed by मेधाः on मनु V. 111, 28. The first three half-verses are नाराद ( द्वादशम  
28-29), the printed text of which does not contain the half verse यक्षः &c.

206. बालद्वयं ग्रामवृद्धा वर्षवेपुराणवह्निप्रापणात् । द्वेषद्वयं च । कौटिल्य  
II. 1. p. 48.

207. गार्हपत्याहुतां च मानेन्याने रक्षिते स्वातन्त्र्यं । वसिष्ठ 19. 13.

208. यन्मनुजानामनुदौ राजा स्वयं जातृपात् । न निगम्यः सन्ति परे यद्यतोदयाः ।  
नीतिवाक्य. p. 98.

(Chan. Up. V. 11. 5). Āp. Dh. S.<sup>209</sup> (II. 10, 26. 6-8) lays down that the officers should protect a city against theft for one *yojana* round it and in the case of villages for one *krośa* round them and that whatever is stolen within those limits must be returned to the owners by the officers. Gautama X. 46-47, Manu VIII. 40, Yāj. II. 36, Viṣṇudharmasūtra III. 66-67, Śānti 75. 10 prescribe that the king should recover from the thief stolen property and restore it to the owner (without distinction of caste), that if he cannot restore it he should compensate the sufferer from his own treasury, and that, if he retained the property recovered from a thief or did not make efforts to catch the thief and compensate the owner, the king incurred sin. Kauṭ. III. 16 contains a similar rule.<sup>210</sup> Viśvarūpa on Yāj. II. 38 quotes a prose passage<sup>211</sup> of Br. with a similar import. The Viṣṇudharmottara<sup>212</sup> (II. 61. 52) remarks that if a person is robbed by his own servants then he (the king) may endeavour to recover it from the servants (by threatening or beating them), but need not restore it from his own treasury. Yāj. II. 270-272, Nār. (pariśista 16-21) and Kāt.<sup>213</sup> give further directions, viz. the thief should be made to restore the property stolen or its price; if the thief cannot be found the officers and wardens of the country pay the price of the stolen articles; the property stolen in the village should be made good by the headman of the village, if the thief's foot-steps

209. सर्वतो योजनं नगरं तस्मिन्नेषो रक्षयत् । कोशे धामिभ्यः । तत्र यन्मुच्यते तैस्तद्वति-  
वापयत् । आप. ध. सू. II. 10, 26. 6-8.

210. परचक्रावधीकृतं तु प्रधानीय राजा यथासं ययच्छेत् । चोरदुतमविद्यामानं स्व-  
द्वन्द्वेभ्यः ययच्छेत् । कौटिल्य III. 16 p. 190.

211. चोरदुतमपतित्व यथास्थानं ययच्छेत् । कोशाद्वा दद्यात् । यौ. X. 46-47; प्रपा-  
द्वर्तमशक्यं स्वाद्धर्मं चोरिद्वर्तं यदि । तत्स्वकोशात्तद्वैधं स्वाद्धर्माकेनोपजीवतः ॥ शान्ति 75. 10;  
The Mītasāra on Yāj. II. 36 quotes Gauṇ. and Śānti 75. 10: 'तथा च बृहस्पतिः ।  
चोरपद्वर्तं तु सर्वेभ्यो निष्कार्षणीयम्' । अज्ञाने स्वकोशाद्वा । अद्धन् चोरकित्तिवपी रथात् ।  
विश्वस्मय on Yāj. II. 38 (of Tri. ed.).

212. न तद्वाजा यथासं गृहे पालयिष्यारक्षैः । प्रचरन्निद्वर्तं द्वयं कार्यं तज्जान्वेक्षयन् ॥  
विष्णुधर्मोत्तर II. 61. 52, quoted by राजनीतिम. p. 127.

213. गृहे तु सुवित्तं राजा चोरघातांस्तु द्वापयेत् । अशक्यं च द्विष्याताम् यदि चोरो  
न लभ्यते ॥ ग्रामान्तरे हनं द्वयं ग्रामादप्यं सद्वापयेत् । विधीते स्वामिना देवं चोरोद्धर्माग्नि-  
वीकते ॥ कात्यायन quoted by अपराक्ष p. 344. Vide 'Selections from Peshwa  
Dafat' vol. 43 p. 131 (No 166) for a comparatively recent (18th century)  
instance of a village (Pājar in this case) being held responsible collectively  
for a theft.



are not traced as going out of the village; if the theft takes place in a pasture land or forest (and the thief is not found), the owner of it should be made to pay; if however the theft is not committed in a forest but on the road then the officers appointed to arrest thieves should be made to pay; the whole village may be made to pay the compensation when the theft is within the boundaries of a village but outside the limit of the residential quarters, if the footsteps of the thief are not traced as going out of the village; if the theft takes place beyond one *krośa* from a village then the surrounding five or ten villages may be made to pay the compensation. Yaj. II. 271 and Kat. mention an officer called 'cauroddhartā' ('or coroddhartā'). The 'cauroddharapika' (thief-catcher) is an officer mentioned in numerous inscriptions e. g. in the Palitana plates of Dharmasena II of Valabhi in Gupta year 252 (E. I. vol. XI at p. 83), in the inscription of Nārāyaṇapāla where we have both cauroddharapika and koṭṭapāla, modern Kotwal (I. A. vol. XV p. 304) and in the grant of Ballālasena quoted above (p. 153, n. 191). Kautīlya IV. 13 also gives similar rules and mentions an officer called 'corarājuka' who has to make good the loss of merchandise by theft between two villages or lands that are not pasture lands.

The first quality required in a king according to Yaj. I. 309 quoted above (p. 44) is great energy and Kauṭ. also (in VI. 1) mentions 'great energy' (mahotsāha) among the qualities called 'abhi-gāṃika'. Works on dharmaśāstra and arthaśāstra emphasize the fact that a king must always be full of activity and must not be lethargic or fatalistic. In the Mahābhārata the topic of human effort and *daiva* (fate or destiny) comes up for treatment in numerous places and is put in the mouth of several characters with different emphasis according to circumstances. In Ādi 1. 246-247, 89. 7-10, Sabhā 46. 16, 47. 36, 58. 14, Vanaparva 179. 27-28, Udyoga 8. 52, 40. 32, 159. 4, 186. 18, Āśramavāsika 10. 29 the emphasis is on *daiva* as all powerful, it being said that human effort is useless as against *daiva*. A golden mean is advocated in Ādi 123. 21, Sabhā 18. 12, Udyoga 79. 5-6, Śānti 56. 14-15, Sautpika 2. 3, in all of which it is said that worldly affairs require both *paraṇyākāra* (effort) and *daiva*. In certain other passages it is recommended that effort is superior to *daiva* and that one's business is to make efforts and not to care for fate; e. g. in Droṇa 152. 27, Śānti 27. 32, 58. 13-16, 153. 50, Anuśāsana 6. 1 ff, Sautpika 2. 12-13 and 23-24. A few of the striking passages indicative of the three lines of thought are

set out in the note below.<sup>214</sup> Energetic action, according to Śānti. 58. 13-15, is declared by Bṛhaspati to be the root of rājadharma. Nectar was obtained and asuras were killed by the gods by means of energetic action and Indra secured his high position in heaven and here by energetic action. Br. makes the characteristic remark 'A man who is a hero of action leads those who are heroes in speech and the latter are seen to cater for the pleasures of the former and wait humbly on him'. The Bhagavadgītā in its final summing up of the philosophy of Activism without an eye to the fruit of it but from a sense of duty declares (XVIII 13-16) 'that in the Sāṅkhya philosophy five categories are mentioned as conducive to the accomplishment of all actions viz. the place, the agent, various kinds of instruments, diverse and separate activities and lastly *daiva*; that whatever action a man commences - either with his body, words or mind these five are its causes, whether the action be righteous ( *nyāya* ) or the opposite of it, and that this being the true state of things ( i. e. the fruit depending on the co-operation of five elements and not on one alone ) that man who regards himself alone as bringing about a result is a fool and has no correct perception.' Kāuṭīya also ( I. 19 last two verses ) says ' activity ( *utthāna* ) is the root of wealth and the opposite of it is the root of evil. In the absence of activity the loss of present and future acquisitions is sure; by activity a king can obtain his desired object and plenty of wealth'. Yaj. ( I. 349 and 351 ) states that success in undertakings depends upon both fate and human effort, yet fate is nothing but the

214. देवं वज्राभिरोधेन को निषत्तितुमर्हति । विषातुविहितं मार्गं न कश्चिदतिचरेत् ।  
आदि 1. 246-247; देवं वृषकारेण को निषत्तितुमर्हति । उद्योग 180. 18; देवमेव परं  
मन्त्रे वीर्यं तु निरर्थकम् । समा 47. 36; देवं वृषकारेण को वज्रत्तितुमर्हति । देवमेव परं  
मन्त्रे वृषकार्यं निरर्थकः । वनपर्व 179. 27 ( said by भीम when caught by *Ajagara* );  
न हि विद्वन्तिकार्यां शक्यं भूतेन केनचित् । विद्वमेव ध्रुवं मन्त्रे वीर्यं तु निरर्थकम् । उद्योग  
40. 32; (2) देवं वृषकारे च लोकौघं संमतिष्ठति । आदि 123. 31; अपरस्य हेतुः सिद्धिर्हि  
कर्मैवैवं च संभवति । समा 16. 12; देवे च मातुषे चैव संयुक्तं लोककारणम् । उद्योग 79. 5;  
न ह्यध्यानमुने देवं राजानमर्थं प्रसाधयेत् । साधारणं ह्ययं होतृदेवसुराध्यानमेव च । शान्ति  
56. 14; न हि देवेन सिद्ध्यन्ति कार्याण्येकेन मनसः । न चानि कर्मण्येकेन ह्यग्रां सिद्धिस्तु  
योगतः । सौत्तिक 2. 3; (3) यतो हि सत्तत् कारकसहो देवेन सिद्ध्यति । शान्ति 133. 50;  
उप्राज्ञता मनुष्याणां ये भवन्त्यमनसि नः । उत्थानं ते विवर्हन्ति याज्ञानां तस्य रोचते । वृद्धानां  
वचनं क्षुब्धं योन्तुत्थानं प्रयोजयेत् । उत्थानस्य फलं सम्यक् तदा न लभेदचिरात् । सौत्तिक  
2. 13 and 13; उत्थानं हि नरेन्द्राणां वृत्त्यतिरिभासतः । राजधर्मस्य उत्कृष्टं श्लोकोवाच  
निबोध मे ॥ उत्थानेनासुरं लभ्यमानमेनासुरा हन्तः । उत्थानेन महेन्द्रेण सैदेवं कार्यं विधीतं  
च । उत्थानार्थीरा वृषको वागीश्वरमभिहितः । उत्थानवीर्यान्वाजीरा समपन्न उपसन् ।  
शान्ति 58. 13-15.



human effort of past lives manifesting its effect (in this life) and that as on a single wheel a chariot cannot progress, so fate cannot accomplish anything without human effort. Yāj. I. 350 refers to other views viz. fate alone leads to success, human effort alone does so, that success results of itself (without any cause), while others say that it is Time that brings about all results. Manu VII. 205, Matsya 221. 1-12 (all of which are quoted in the Rājantīprakāśa pp. 313-314) and Viṣṇudharmottara II. 66 (which has the same verses as in Matsya 221) inculcate the same doctrine as that of Yāj. I. 349 and 351 and emphasise that one must always make efforts (tasmāt sadotthanavatlā hī bhāvyaṃ-Matsya 221. 12). The Matsyapurāṇa 221. 2 emphatically<sup>215</sup> states that effort is superior. Medhātithi on Manu IV. 137 quotes a *subhāṣita* 'those devoid of effort are engaged in calculating the aspects of planets; there is nothing impossible of accomplishment for those who are determined and who are able to put forth spirited efforts.' Kaut. (IX. 4 last two verses), Kām. V. 11, XIII. 3-11 emphasize the importance of strenuous efforts. Śukranītisāra (I. 46-58) holds a long disquisition on effort<sup>216</sup> and *daiva*. It contains the following fine sentiments (I. 48-49):<sup>217</sup> 'Men of intellect whose career is honourable regard human effort as the highest (and not fate), while impotent men not being able to make efforts have recourse to fate; but all is centred in both *daiva* and effort'. Vide Rājantīprakāśa pp. 312-315 and Nītimayūkha pp. 52-53 for further remarks on *daiva* and effort. In one place the Mahābhārata (Udyoga 127. 19) contains the bravest and loftiest advice 'man should always press forward (make efforts), should never bend; striving is manliness; one may even break at a point which is not the joint, but should never bend'<sup>218</sup>. The Brhat-Parāśara-smṛti X pp. 282-283 contains a long discourse on *daiva* and *puruṣakāra*. Vide Vāyu 9. 60-61 and Mārka. purāṇa 2. 61-62 and 23. 25-26 for similar passages on *daiva* and effort.

An important doctrine of the writers on Arthashastra is more or less based on the necessity of *niśāha*, viz. the doctrine of three

215. स्वमेव कर्म देवास्तत्र विद्धि देवान्तराजितम् । तस्मात्पौरुषमेवेह भंडमाहुर्मनीषिणः ॥ मनुष्य 221. 2 । भीमस्तो दण्डचरित्ता मन्थने कौरव मघत् । अशक्ताः पौरव कर्तुं क्त्वाप्य देव कुपामते ॥ देवे दुष्टकारे च कालु सर्वे प्रसिद्धिम् । श्रुतः I. 48-49 : अस्ति कश्यपिस्तु भाषितम् । होमाः दुष्टकारेण मण्डमि ग्रहस्थितिम् । सत्त्वोपसममर्थाः नास्तार्ष्यं व्यवसायिनाम् ॥ मेधाः ०० मनु IV. 137.

216. उद्यमोऽद्यैव न मनेषुष्यमो ह्येव पौरुषम् । अप्यपर्यणि मण्डेन न नमेदिह कार्त्तिकम् ॥ उद्योग 127. 19.

*śaktis*, i. e. of *utsāha*, *prabhu* (or *prabhāva*) and *mantra*. These three occur in the Mahābhārata (Āśramavāsika 7, 6). The S. V. p. 46 quotes a sūtra of Gautama (not found in the printed Dh. S.) 'the three śaktis, viz. *prabhu*, *mantra* and *utsāha* are based on that (kośa)'.<sup>216</sup> In VI. 2 Kauṭilya defines *mantraśakti* as the power of the knowledge (of statecraft), *prabhūśakti* as the power of treasury and army and *utsāhaśakti* as the force of the king's bravery.<sup>217</sup> Kauṭilya (IX. 1) holds a discussion about the relative superiority of these three and gives it as his opinion (as against that of the śākyas) that *prabhūśakti* is superior to *utsāhaśakti* and that *mantraśakti* is superior to *prabhūśakti*. Kām. XV. 32 defines<sup>218</sup> the three thus: 'the employment of the proper line of policy out of the six *upāyas* (*sandhi*, *vigraha* &c.) is called *mantraśakti*; a full treasury and army constitute *prabhūśakti* and activity of the strong is called *utsāhaśakti*; the king possessed of all these three becomes the conqueror.' The Nītivākyaṃṛta (śāddguṇyasamuddeśa) p. 322 defines them in the same way.<sup>219</sup> According to the Daśakumāracarita<sup>220</sup> VIII the goal (or purpose) of a king is determined by *mantra* (consultation with ministers about policy), commencement of actions (for securing the goal) is due to *prabhāva* and the successful termination of undertakings is brought about by energy. The Parāśurāmapratāpa (folio 15a) quotes a verse which defines 'prabhūśakti' differently viz. as the power to command. Vide also Agnipurāṇa 241. 1, Mānasollāsa II. 8-10 pp. 91-94. Kām. (XIII. 41-58) brings together the numerous activities of the king.

A king endowed with valour has to employ several means (*upāyas*) to extend his dominions and to keep his hold on his own people. According to the Rāmāyana V. 41. 2-3, Manu VII. 109, Yāj. I. 346, Śukra IV. 1. 27 and others the

216 a. अत एव नीतिमयस्य । यधुमन्त्रोत्साहशक्तयस्तन्मूलाः इति । तन्मूलाः कोश-  
मूला इत्यर्थः । म. वि. p. 46.

217. इतिविधा ज्ञानवत् मन्त्रशक्तिः कोशवत् यधुशक्तिः विक्रमवत् उत्साहशक्तिः ।  
अर्थशास्त्र VI. 2. p. 261.

218. मन्त्रस्य नीति युवयोपचारं युकोशवृद्धौ यधुशक्तिमाहुः । उत्साहशक्तिं बलव-  
द्विषेदो विज्ञातिपुङ्गवो भवतीति जेठा । कामन्दकीयः XV. 32.

219. कोशवृद्धयत् यधुशक्तिः । युद्धशक्तिर्युगारौ इत्यन्तौ । विजयो वत् चोत्साह-  
शक्तिस्तत्र समौ इत्यन्तः । नीतिवाक्यपाभुत pp. 322-323.

220. मन्त्रेण हि विनिश्चयोऽर्पणो यमकेन वारम्भा उत्साहेन निर्वहणम् । युद्धकुमार-  
चरिते VIII. p. 144 (Bom. S. S. ed. of 1919); आज्ञाकरणेन वा इतिः मर्षेण सूर्यानि  
स्थिता । यधुशक्तिर्हि वा ज्ञेया समामहिमोद्धवा । q. by परशु २ (राजवृत्तमकार-  
folio 15a). Vide पञ्चतन्त्र III. 30 'उत्साहशक्तिसंयुक्तो हन्त्यापद्यते युद्धम्' ।



upāyas are four viz. *sāma* (conciliation), *dāna* (giving gifts or presents), *bheda* (causing dissensions) and *danda* (punishment or depriving of property or causing bodily harm).<sup>221</sup> In the Hathigumpha Inscription, the king Khāravela (latter half of 2nd century B. C.) states that in the 10th year of his reign he sent, following the policy of *danda*, *sandhi* and *sāma*, an expedition against Bharatvarṣa, conquered that land and obtained jewels and precious things (E. I. vol. XX pp. 79, 88). This shows that the theory of the upāyas must have been evolved several centuries before the Christian era. Some others such as Kām. XVII. 3, Matsya 222. 2, Agnipurāṇa 226. 5-6, Bārhaspatyasūtra V. 1-3, Viṣṇudharmottara II. 146-149 add three more to the above four. Sabhā 5.21 mentions the number seven and Vanaparva 150.42 mentions *sāma*, *dāna*, *bheda*, *danda* and *upekṣā*. About the additional three there is some difference of opinion, most holding that the three are *māyā*, *upekṣā* and *indrajāla* (Kām., Agnipurāṇa), while the Bārhaspatyasūtra (V. 263) says they are *māyā*, *upekṣā* and *vadha* and others say they that are *māyā*, *akṣa* (dice) and *indrajāla* (Sarasvativilāsa p. 42). *Māyā* means 'deceitful trick'. The Viṣṇudharmottara II. 148 gives illustrations, such as tying a firebrand to the tail of a bird that often perches on the enemy's camp to produce the delusion that a meteor (an evil omen) fell down from the sky. Kām. XVII. 54 cites the example of Bhīma's meeting Kicaka dressed as Draupadī. Kām. (XVII. 51-53) gives other examples of *māyā*. *Upekṣā* consists in not preventing a person from doing what is unjust or being addicted to some vice or engaging in a fight and is illustrated by king Virāṭa's connivance at the death of Kicaka (Kām. XVII. 55-57). *Indrajāla* means 'creating an illusion by means of incantations and other tricks' e.g. creating the illusion before the eyes of the enemy that a vast army is coming to attack them or showing that angels are descending to fight against them or making a shower of blood fall in the enemy's camp etc. (Kām. XVII. 58-59, Viṣṇudharmottara II. 149). About the four well-known *upāyas*, Manu (VII. 108-109) says that for the prosperity of one's kingdom *sāma* and *danda* (punishment) are preferred, but if

221. अल्पशेषमिदं कार्यं दृढेनमस्तिश्रया । वीरुपापानतिक्रम्य चतुर्थं इह दृश्यते ।  
न सान्निध्यं सुभाष कल्पते न वाचसर्धोपचिते सुखते । न भेदसाधना नददयिता जनाः  
दराक्रमन्त्रेण ममेह रोचते ॥ सुन्दरकाण्ड 41. 2-3; उपायोपदकारिकमोः सुरकमकुतिरुप-  
द्रेशोपि सुप्रतिभवंति सार्वभौतः । न हि कुलायना कस्यापि क्षुनिः किन्तु वीरभोग्या वसुधरा ।  
मानोपवदानभेददृष्ट्या उपायाः । नीतिशास्त्रासुत p. 332.

the king's antagonists do not yield to him by the employment of the first three then he may bring them round by *danda* (i. e. fighting and harassing them) and that (VII. 198, 200) *danda* is to be employed as the last resort, since victory is not certain. In the *Sāntiparva* 69. 23 the view of Brhaspati is quoted<sup>222</sup> that fighting should always be avoided (as far as possible) and that for securing one's purpose three upāyas (other than fighting) are to be resorted to. *Brhat-Parāśara* X p. 280 also says that a wise man should not resort to fighting and that *danda* is to be resorted to only when there is no other course left. In *Udyoga* 132. 29-30 (cr. ed. chap. 130) Kuntī sends a message through Kṛṣṇa to her son: 'begging is forbidden to you nor is agriculture appropriate for you; you are a ksatriya living by the power of his arms and a protector against injury (*kṣatāt trātā*). Recover your ancestral share by *sāma*, *dāna*, *bheda*, *danda* and *naya*'. In *Udyoga* 150 (cr. ed. 148) Kṛṣṇa informs Yudhisṭhira how he first employed *sāma*, then *bheda*, then *dāna* (viz. giving up the whole kingdom for five villages) and how only *danda* is the proper recourse in the case of the wicked Kauravas. Hopkins, as very often, being obsessed with his ideas of three strata in the *Mahābhārata* says that three means appear to be the oldest form and four means a later idea. There is hardly any warrant for this opinion as for many others in the same strain (J. A. O. S. vol. XIII pp. 182-183 n). The *Viṣṇudharmottara* II. 146 speaks of the four upāyas and states that *danda* as regards a foreign state is open (*prakāśa*) i. e. burning and not-open (*aprakāśa* i. e. by poison or secret death). The *Mit.* on *Yāj.* I. 346 and *Kām.* XVIII. 1 say the same thing. The *Viṣṇudharmasūtra* III. 38 prescribes that the four upāyas are to be employed at the proper time and according to the attitudes of the hostile king, friendly king, the *mudhagami* and *ulāṣini* kings<sup>223</sup>. The *Mit.* on *Yāj.* I. 346 expressly states that the four upāyas are to be employed not only in the affairs between kings but also in the lives of all ordinary people and cites a verse wherein a father or teacher addresses a son or pupil making use of all four means<sup>224</sup>. *Kām.* XVII, *Mānsollāsa* II.

222. चर्चनीयं सदा दुर्द्धं राज्यकामेन धीमताः उपायैस्त्रिभिर्वादानमर्थेऽपहं बुद्धयतिः । शान्ति 69. 23. न दुर्द्धमाभयंयाज्ञो न दुर्द्धात् स्वयलक्षयम् । ... यद्वन्ति सर्वे नीचिज्ञा दुर्द्ध-स्वयमलिका यतिः । बुद्धयराशरः दुर्द्धस्वयमलिका यतिः is the last वाङ् of च. I. 346.

223. अस्त्रमिवादानमप्यमेव सामभेददानदुर्द्धानि यथाहं यथाकारं यदुच्यते । विष्णुधर्मसूत्र III. 38.

224. एते सामादयो न केचन राज्यव्यवहारविधाः अपि तु संहतलोकव्यवहार-विधाः । यथा—अधीश्व दुर्द्धकापीश्व द्वास्वामि त्व न मोदकान् । यदास्वयमेव द्वास्वामि कर्ण-द्वयाद्वयानि ते ॥ इति । मिता. ०० वा. I. 346.



17-20 verses 972 ff (pp. 117-122), *Nītivākyāmrta* pp. 332-336 treat at length of these four upāyas. A few points only are noted here. *Sāma* is of five kinds viz. recounting the good turns done by each to the other; praising the qualities and actions of the persons to be won over; declaring the relationship of each other; representing the good that will result in future; declaring 'I am yours and I am at your service' (Kām. XVII. 4-5). *Dana* consists in returning what is deposited with one by another, consenting to the taking away by another of one's things, making a gift of something new, giving what the other chooses to ask for, sending at fixed times what has to be given. *Bheda* (sowing dissensions) consists in giving heavy bribes or presents to ministers or feudatories, the crown prince and high officers of the enemy that are dissatisfied for various reasons, creating distrust between the king and his ministers, the rich men and the handsome men in the kingdom by the threat of the loss of life, honour, position, and wealth, by the fear of imprisonment, by the fear that the king may carry away the beautiful wife of a subject or by suggesting that a handsome young man has his eye on the king's harem, and suggesting to a king that a kinsman desires to secure the kingdom to himself and thereby inducing the king to put out his eyes or cut off his limbs. This is effected by secret spies or persons who are in the pay of both kings (*ubhayaśaktina*, acc. to *Mānssollāsa* p. 119 v. 995)<sup>221</sup>. Vide Kām. XI. 1, *Matsya* chap. 323 and *Sūtra* IV. 1. 25-54 for *bheda*, Kām. XI. 1 explains at length how an aspiring conqueror is to sow dissensions between corporations and the leaders of corporations, between chiefs and other people. One or two passages may be quoted by way of sample: "Spies gaining access to these corporations (of warriors and others) and finding out jealousy, hatred and other causes of quarrel among them should sow seeds of a well-planned dissension among them, and tell one of them "this man decries you". Spies may give publicity to the consideration of priority shown to inferior persons in social intercourse in the face of the established custom of recognising the status of other persons by birth, bravery, and social position. In all these disputes the conqueror should help the inferior party with men and money and set them against the superior party. A woman who has disappointed her lover and has been for-

221. शत्रुस्वेतामश्रुस्वेतैर्द्वैदमध्वेनैः । नीतसमानितान् कृत्वा न भेदोऽयं दलकृतान् ।  
 अभाषणो मानभङ्गो धनदानेन च बन्धकः । दाताभितोऽङ्गुलं हनि भेदोऽयं बह्विधः ।  
 मानसोद्भास II. 13, verses 988-989 p. 118.

given may approach and say to a chief 'this chief is troubling me when my mind is set on you; when he is alive I cannot stay here' and thus induce the former to slay the latter." The *Matsyapurāṇa* 223, 4 states that united people are more than a match even for Indra unless bheda is employed, that dissensions are of two kinds, internal and external, of which the former is more serious. External dissension means the quarrel with a chief, but internal dissension means dissension between a king and his queen or heir apparent or ministers. One should try to prevent dissension with one's own relatives. Śānti 69, 23 also advises the conquest of territory by fomenting dissensions. Therefore the expedient of '*divide et impera*' has a respectable antiquity. Danda in the case of a king's country consists in sentencing to death or corporal punishment or fine and in the case of the enemy in fighting, destroying or devastating his country by seizing his crops and grain, cattle, wealth, forts and in imprisoning and injuring his people, burning his villages and forests.

There were certain privileges that the king enjoyed. His rights to treasure trove have already been referred to (H. Dh. vol. II, p. 146). Kaṭi (IV, 1) gives the following rules. The person giving information about the discovery of a mine, jewels or treasure trove gets one-sixth, but if the informer be a servant of the king he gets  $\frac{1}{8}$ ; treasure trove beyond 100000 paṇas went to the king wholly (the finder being entitled to a  $\frac{1}{16}$ th share only up to 100000 paṇas of the whole); a subject who can prove that the treasure trove belonged to his ancestors would get the whole of it; if he takes it without establishing his ancestral ownership he is to be fined 500 paṇas and 1000 paṇas if he appropriated it secretly. The king also took by escheat the property of a person dying without leaving any heir except in the case of brāhmanas (vide H. Dh. II, p. 146 where some authorities are cited). This subject will be dealt with at greater length under the next section on 'law and justice'. The king was also entitled to all property that was lost or given up by the true owner. Vide Gaṇṭ.<sup>225</sup> X. 36-38, Vas. 16, 19, Manu VIII 30-33, Yāj. II. 33, 173-174, Śāṅkha-Likhita, Gaṇṭ. and Baud. Dh. S. (I 10, 17) say that the king should preserve for one year articles found after proclaiming the finding by beat of drum, while Manu says that

225. अण्डमरुतानि कसमिदम्य राजे वव्रतुः । विकल्प्य कससर् राजा स्वयम् । ऊर्ध्वमधिगन्तुमर्हति राज्ञः शेषः । मी. X. 36-38; पर्वण्यवसानिकानि राजन्यानि मयलि । काङ्क्षितेन quoted in नि. र. p. 399



the period is three years. The Mit. on Yāj. II. 33 reconciles these texts by saying that if the true owner comes to the king and establishes his ownership he gets back the entire article without paying anything for safe custody, if the owner comes in the 2nd year he pays  $\frac{1}{3}$  of the price for custody, if in the third year he pays  $\frac{1}{2}$  and  $\frac{1}{3}$  if he comes after three years. The finder gets  $\frac{1}{3}$  out of the share taken by the king. If the owner does not come at all the finder gets  $\frac{1}{3}$  and the king the rest. The king may dispose of the article if none claims it within that period, but if the owner comes after three years and the article has been disposed off, the king should return the equivalent of the portion taken by him. Yāj. II. 174 specifies other scales of charges for the custody of unclaimed animals such as four *paṇas* for a horse &c. Another special privilege of the king was that he could not be cited as a witness in a judicial proceeding between private parties. Vide Kauṭ. III. 11 (p. 175), Manu VIII. 65, Viṣṇudharma-sūtra 8, 2.

Constitutionally there was no one who could directly bring to book the king guilty of injustice. But the Dharmasāstra writers insisted that *dharma* was the king of kings (Bṛ. Up. I. 4. 14 quoted above p. 97 n. 125), that Varuṇa was the chastiser of kings (Manu IX. 245); therefore they appealed to the higher nature and conscience of the king and prescribed that if a king levied an unjust fine, he should offer thirty times of that amount to Varuṇa, throw the amount in water or distribute it among *brāhmaṇas* (Yāj. II. 307) and that where an ordinary man would incur a fine of one *kāṣṭhapaṇa* for a wrong, the king certainly deserves to be fined a thousand *kāṣṭhapaṇas* (Manu VIII. 336). The remarks of Medhātithi on that verse quoted below are very interesting, when he insists on the principle that fines for the same wrong should vary with the capacity to pay<sup>227</sup>. Even Kauṭilya (IV. 13 last two verses) falls in line with Manu IX. 245 and Yāj. II. 307. But these prescriptions of Manu, Yāj. and Kauṭ. were counsels of perfection and must have been futile. No king would ordinarily fine himself. Therefore some medieval

227. महाधनत्वाद्धर्षं दण्डं न विगणयेद्भाना । अधिष्ठातां मन्त्रिपुरोहितादीनामनवेष्ट  
कल्पनया ननुनायिकमायः । धनदण्डव्यं बाह्येणैवोपेत्य परोक्षेन वदन्वाप स यो तावद्वयति  
( वलायत् ? ) राज्ञां दण्डधरो हि सः । मेवा<sup>२२८</sup> on मनु VIII. 336. Compare अदण्डवदण्डे  
राज्ञो दण्डविराजुमुपेयमानि । वदन्वाय प्रदातायो बाह्येणैव सतः परम् ॥ तेन ननुपयते पार्व  
राज्ञो दण्डापचारवत् । ज्ञाता हि वदन्वा राज्ञां मिथ्या ग्याचरतां वु ॥ कीदृश्य IV. 13  
last two verses. तस्माद्वाज्ञान्वात्वरनापनीनानिति रत्नाकरो कमेव ग्याय ( वलायत् ? ) इति  
दण्डवत् । स्वल्प स्वल्पे दण्डनाशुपेयः । दण्डविवेक p. 55.

digests like the *Vivādaratnākara* and the *Dandaviveka* ( p. 55 ) interpret these texts as meaning that the word 'rājan' applies here only to subordinate chiefs and not to a king who is independent.

The flourishing state of a kingdom well governed by a good, well-equipped and active king is very graphically described in the *Rāmāyana* ( II. 100. 43-46 ) ' I hope your country is full of hundreds of *caityas* (platforms for sacred trees) and of people who are well-placed; is rendered charming by temples, *prapāṭas* ( sheds where water is distributed to travellers *gratis* ) and tanks; in which men and women are joyful; which is set off to advantage by merry gatherings and festivals; the whole extent of which is well cultivated; which is full of cattle and free from injury ( to beings ); which does not depend upon rains alone ( for its crops ); which is beautiful, free from beasts of prey and all kinds of dangers; which is endowed with mines; which is free from wicked men and enjoys prosperity and happiness'. The *Ādiparva* chap. 109 ( cr. ed. chap. 102 ) also contains a fine description of a well-governed and prosperous country. The country was to be full of public wells, gardens and meeting-halls ( *sabhā* ). The *Viṣṇu-dharmottara* I. 13. 2-12 contains an ideal description of ancient Ayodhyā. ' It was endowed with hundreds of parks; it celebrated festivals and held gatherings of people; its population was free from disease and had valiant men; it always resounded with the music of lutes, flutes and tabors; it had fair complexioned, charming *hetarai* clever in brilliant conversation; its population was always gay; it resounded with the recitation of the *Veda* and was endowed with companies of *brāhmaṇas*; its market rows were full of men that had applied scents to their bodies; there was not a man there who was wretched, dirty or emaciated; it stretched for three *yojanas* on the bank of the *Sarayū* and was ten *yojanas* in the middle.'



## CHAPTER VI

### DURGA ( FORT OR CAPITAL )

Manu IX. 294 places the capital (pura) even before rāstra. Medhātithi (on IX. 295) and Kullūka explain that the loss of the capital is a more serious danger than even the loss of some territory, because if the capital, which possesses all the stocks of food, in which are centred the principal elements and the army, is saved, then it is possible to retrieve even lost territory and to protect the country. It is as it were the pivot of the whole machinery of government. Other writers (and even Manu in VII. 69-70) place the capital or fort after the rāstra. It is probably due to the geographical situation in North India and the nature of the fighting in ancient times that made the capital and forts of great importance in the several elements of the State. The capital mirrored the prosperity of the country and if properly walled also provided security. Yāj. I. 321 says that forts are meant for the safety of the king, the people and the treasury (*janakośātmaguptaye*). The reason for the construction of forts is well put by Manu VII. 74 viz. that a single archer under the shelter of the fort-wall can fight a hundred of the enemy and a hundred can fight ten thousand. The Pāñcatantra (I. 229 and II. 14) has a similar verse. Bṛhaspati quoted by the Rājamtiprakāśa<sup>228</sup> p. 202 states that the king should construct a fort with walls and a gate for the protection of himself, his wives, the people and the (wealth) collected by him. Kaut. (II. 3 and 4) deals at length with the construction of durgas and the laying out of the capital in one of them. He says that in the four quarters of the boundaries of the kingdom forts should be built for offering resistance (to the enemy) on ground naturally fitted for the purpose. He speaks of four kinds of forts viz. 'audaka' (water-protected, which is on an island surrounded by water or on a plain surrounded by low ground), pārcata (mountain one, such as a rocky hill or a cave), dhāmāna (desert fort, on a waterless tract full of thickets or waste land), a forest fort full of wagtalls and water and

228. बुद्धसंज्ञिराहः । आत्मद्वाराभ्येष्टेकानां सञ्चितानां तु युतये । युयतिः कारयेद्दुर्गं  
प्रकारद्वारसंयुतम् ॥ राजनी. व. p. 202 and राजधर्मकाण्ड p. 28.

thickets of reed. He says that the first two are suited for the protection of populous places and the last two for the protection of foresters. Vāyu 8. 108 refers to four kinds of durgas. Manu VII. 70, Śānti 56. 35 and 86. 4-5, Viṣṇudharmasūtra III. 6, Matsya 217. 6-7, Agnipurāṇa 322. 4-5, Viṣṇudharmottara II. 26. 6-9, III. 323. 16-21, Śukra IV. 6 speak of six kinds of forts viz. dhanvadurga (which is waterless five yojanas round a raised plain), mahidurga (a land fort, which is surrounded by a wall built of stones or burnt bricks, that is at least twelve feet high and twice as high as it is broad), jaladurga (water fort, surrounded on all sides by deep water), vārksa durga (fort that is surrounded for one yojana on all sides with thorny and tall trees and thorny creepers and bushes), ṛdurga (fort that is guarded by a numerous army of four sections on all sides), giridurga (mountain fortress, difficult to climb and with only one narrow access). Manu VII. 71 says that the mountain fortress is the best of all, while Śānti 56. 35 states that ṛdurga is the most difficult to conquer. The Mānasollāsa (II. 5 p. 78) speaks of nine kinds of durgas (adding those built with stones, bricks and mud). The Parasurāma-pratāpa enumerates eight kinds of durgas (Rājavalabhakāṇḍa, folio 1) and states that the wall of a fort may be of stones or of baked bricks or of mud. Manu VII. 75-Sabhā 5. 36 (= Ayodhyā 100. 53), Matsya 217. 8, Kām. IV. 60, Mānasollāsa III. 5 (verses 550-555), Śukra IV. 6. 12-13, Viṣṇudharmottara II. 26. 20-23 prescribe that forts should possess plenty of arms, grain, drugs and other materials, wealth, horses, elephants, beasts of burden, brāhmanas, artisans, machines (called Śataghnis acc. to Matsya, that kill a hundred), water and fodder. The Nītivakyāmṛta (durga-samuddesa p. 199) says that there must be means of leaving it secretly, otherwise it will be a prison and that no one should be allowed to enter it or leave it without a pass or without being searched. Kaut. (II. 3) gives detailed instructions for the construction of fort walls, towers, ditches, pillars, lotus ponds and buildings inside the fort, which are all passed over for want of space. Vide the Rājadharmakāṇḍa pp. 28-36 and the Rājadharmakaustubha pp. 115-117 for numerous quotations from the Dharmavyāsa of Uśana, the Mahābhārata, the Matsya, the Viṣṇudharmottara and other works on durga.

In the Rgveda we have frequent mention of cities. In I. 63. 7 Indra is said to have shattered seven cities for Purukutsa



and in II. 20. 8 it is narrated that Indra killed the *dasyus* and destroyed their cities of *ayas* (copper, *havi dasyūn para āgastī nībhū*). This shows that walled cities were known even at that distant date. There is difference of opinion as to whether the walls were of mud and wood or of stones and bricks. Vide Hopkins in J. A. O. S. XIII. pp. 174-176. The Tai S. VI. 2. 3. 1 speaks of the three cities of *asuras* constructed with *ayas*, silver and gold (*harinī*). In the *agricayana* as described in the Śat. Br. thousands of baked bricks were required. The excavations at Mohenjo-daro show that walls were built of burnt bricks (Marshall, vol. I. pp. 15-26). There is no reason to assume that houses, palaces and city walls could not have been built of bricks, simply because no purely Hindu ruins anterior to Alexander have yet been discovered or because Megasthenes describes that Pataliputra had a wall of wooden palisades. One must demur to the remarks of Hopkins on pp. 174-175 of J. A. O. S. vol. XIII. Walls (*prākara*), toranas (arched gates) and upper stories (*atīśalakas*), moats are very often spoken of in connection with capitals in both epics. The gates were sometimes called after cities e. g. in Vanaparva I. 9-10 the Pāṇḍavas are said to have gone out of Hastināpura from the gate called Vardhamānapura.<sup>229</sup> Vide also Āsramavāsi-parva 16. 3. The Mahābhārata states that palaces had dancing halls (*nartanāgāra*) attached to them (Virāṭa-parva 22. 16 and 25-26). Śānti 69. 60 states that the capital was rendered gay by *naṭas* (players) and dancers and Śānti 86 (4-15) describes how cities were to be founded in durgas, how they were to be full of music, festivals and merry gatherings (*samājat-wara*) and what stores they should contain. In the Rāmāyana (V. 2. 50-53) Lankā is described as having palaces of seven or eight stories and mosaic pavements. The Bṛhatsamhita (chap. 53) contains in 125 verses very accurate directions and measurements about palaces, houses &c. (I. e. on *vāstusāstra*). It states that the best kind of royal palace was to be 108 cubits broad, that palaces of 100, 92, 84, 76 cubits may be built, that the length in each case was to be one-fourth as much more as the breadth. It speaks of the dimensions of mansions for the commander-in-chief, ministers, the queen, crown prince, purohita, physician &c. In v. 23 it states that the walls may be of baked bricks or of wood.

<sup>229</sup>. वर्धमानपुरद्वारादभिनिकम्प पाण्डवाः । उद्विष्टाः सञ्चरतः सन्तु सव  
दुष्कृताः सनर्ष 1. 10 ; स वर्धमानद्वारेण निर्वपौ नजसाहपात् । आस्रमवासे 16. 3.

The king was to have his capital inside a fort or independent of it. *Manu* VII. 70, 76, *Āśramayāsi* 5. 16-17, *Śānti* 86. 6-10, *Kām.* IV. 57, *Matsya* 217. 9ff, *Sūkra* I. 213-217 describe where and how a capital was to be built. *Kaṇṭilya* ( in II. 4 ) describes at great length how the capital was to be laid out viz. the extent should be demarcated by three royal roads from west to east and three from south to north, the capital should have twelve gates, provided with concealed land and water exits ; the chariot roads, the royal roads and roads leading to *droṇa-mukha*, *sthāniya*, the *rāṣṭra* and pastures should be four *daṇḍas* ( 16 cubits ) in width. He then prescribes the width of roads for various other purposes. Occupying one-ninth of the whole area of the capital, but to the north from the centre of the capital and in the midst of people of all castes the king's own palace should be built facing the east or north. To the north-east of the palace should be the residences of the king's teacher ( *ācārya* ), *purohita*, ministers and the sacrificial place and water reservoir. He then assigns appropriate places round about the palace for the offices of the several superintendents, to merchants, principal artisans, *brāhmanas*, *kṣatriyas*, *vaiśyas*, prostitutes, wool workers, *śūdras* &c. In the centre of the capital were to be constructed apartments for the images of *Aparājita*, *Apratihata*, *Jayanta* and *Vaijayanta* and the temples of *Śiva*, *Kubera*, the *Aśvins*, *Lakṣmī* and *Madirā* ( *Durgā* ? ). The principal gates named after *Brahmā*, *Yama*, *Indra* and *Kārtikeya* were to be constructed. At a distance of 100 bows ( 400 cubits ) beyond the ditch, platforms for holy trees, groves and embankments should be built. The cemetery should be to the east or north but to the south for the higher *varṇas*. Heretics and *cāndālas* should have a place of residence beyond the cemetery. For each group of ten families there must be a well ; oil, grain, sugar, salt, medicines, dried vegetables, fire-wood, arms, and other essential commodities should be stored in such large quantities that they might last for several years in case of a siege or invasion. The *Matsyapurāṇa* ( 217. 9-87 ) differs from the above description in many ways. It prescribes four wide roads, at the ends of which a temple, the royal palace, the court of justice and the principal gate are to be respectively constructed. Almost the whole of the description in the *Matsya* is quoted by the *Rājanttiprakāśa* ( pp. 208-213 ) and also in the *Rājadharmakāṇḍa* pp. 28-36. The former also quotes ( pp. 214-219 ) a long passage from the *Devipurāṇa* with regard to the construction of a *nagara*.



a *pura*, a *batta* (market), a *puri*, a *pattana*<sup>230</sup> and the temples of several deities that are to be built in each, the rites to be observed in measuring out the ground for each and accurately finding out of the east and other directions. Pāṇini (VII. 3. 14 *prācām grāmanagarānām*) distinguishes between *grāma* and *nagara*, while Patañjali thereon (vol. III. p. 321) explains that *grāma*, *ghoṣa*, *nagara*, and *saṁvāha* are the appellations of different groups or settlements of people. The Vāyupurāṇa (94. 40) separately mentions cities (*purāṇi*) *ghoṣas* (hamlets of cowherds), villages and *pattanas*. Vide Sukranitiśāra I. 213-258 for provisions about the laying out of the capital, the palace, the court of justice, other state offices and public buildings, ditches &c. and Yuktikalpatara pp. 22 ff, Vāyu 8, 108 ff, Matsya 130. Śukra (I. 260-267) describes how four royal roads should start from the palace in four directions, how the best, middling and inferior royal roads should be 30, 20 and 15 cubits in breadth; he defines *padya* (a foot-path), *vīthi* (a lane) and *mārga* as respectively equal to 3, 5 and 10 cubits in breadth, that in the capital there should be no narrow street like a *padya* or *vīthi*, that even in villages the public road should be at least 10 cubits in width, that all roads should slope down from their middle and that all houses should face the royal road. For a description of Ayodhya vide Rāmāyaṇa II. 100. 40-42, which says that it was full of valiant men, had strong gates, was full of elephants, horses, and chariots, was inhabited by energetic people of all castes that were devoted to their duties, that had mansions of various sizes, that it was prosperous and had many physicians. From the Rāmāyaṇa (VI. 112. 42 *śikharathyan-tarūpanā*) and the Mahābhārata (Ādi. 221. 36) it appears that the roads of the capital were watered. In the Harśacarita (III) Bāṇa gives a graphic description of Sthāpaviśvara (modern Thanesar). For the local administration of the capital, vide the duties of the *nāgaraka* described above (p. 149) from Kautilya (II. 36). From the Paharpur plates (dated Gupta *saṁvat* 159 i. e. 478-9 A. D.) it appears that a *nagara-sreṣṭhin* (the chief of the bankers and traders of the capital) was nominated (probably by the king). Vide E. I. vol. 20 p. 59 at p. 61. There was probably a board of the elders of the city (*pauranukhyas* or *pauraviddhas*

230. Compare ग्रामा बृहद्विस्तृताः, पुरी बृहद्विस्तृताः सा एव महत्त्वा पत्तनानि, दीर्घाणीवकादीनि । श्वेताः सर्वग्रामाः । सर्वदाः पत्तनान्द्रग्रामा इति । श्रीधर on भागवत (V. 18. 31) is in सामर्थ्यादिको. p. 102. The *मिलनरत्न* (chap. V) defines ग्राम, श्वेदक, सर्वद, पुर्म, नगर, राजधानी, पत्तन, ब्रह्मेष्ट, विधिर, स्वधारा, स्वामी, विद्वन्वक, निम्न, शाखानगर in all 14 (Tri. ed.). The *प्रथम* (X. 92) speaks of ten of these and IX. 10 gives the extent of ग्राम, श्वेद, सर्वद, पुर्म, नगर.

as in Kauṭilya ) appointed to help the Governor of the capital (*nāgaraka*) in administration. In the Damodarpur copper plates also a *nagarasresthin* is mentioned along with others who were approached for consenting to a purchase of land ( E. I. vol. XV at pp. 130, 133, dated Gupta *saṃvat* 129 ). Megasthenes ( in McCrindle's ' Ancient India ', Fragment XXXIV p. 187 ) describes the city of Palibothra ( Pataliputra ) and its administration. He says that six committees of five each looked to the affairs of the city and were respectively in charge of ( 1 ) industrial arts, ( 2 ) entertainment and care of foreigners, ( 3 ) inquiries about births and deaths, ( 4 ) trade and commerce, weights and measures, ( 5 ) manufactured articles, ( 6 ) collection of the 10th of the prices of articles sold. Fragments XXV-XXVI ( pp. 65-67 ) inform us that Palibothra was 80 *stadia* in length and 15 in width, that in shape it was a parallelogram, that it was surrounded by a wooden wall with holes for discharging arrows and a ditch in front. Arrian states ( pp. 209-210 of McCrindle's ' Ancient India ' ) that Palibothra had 570 towers and 64 gates. Patañjali in his *Mahābhāṣya* frequently brings in Pataliputra ( e. g. in vol. I p. 380 he states that Pataliputra is alongside of the river *Śoṇa*, on *Pāṇ.* II. 1. 16 ), in vol. II p. 311 ( *vārtika* 4 on *Pāṇ.* IV. 3. 66 ) he refers to its walls and to its palaces, in vol. II p. 321 ( on *Pāṇ.* IV. 3. 134 ). In Fa-Hien's time (399-414 A. D.) the royal palace and halls in the midst of the city built of stone still existed and were so grand that they were then believed to have been the work of spirits ( vide Legge p. 77 ). Vide Rhys Davids' ' Buddhist India ' pp. 34-41 for the ancient Indian capitals in the 7th century B. C.

In the *Bhāgavatapurāṇa* ( IV. 18. 30-32 ) it is narrated that Prthu, son of Vena, first levelled the earth, established human habitations in villages, towns, capitals, forts &c., and that before Prthu people resided where they liked and there were no such groups as villages or towns. Bhṛgu quoted by Śrīdhara according to *Rājanīti-kaustubha* defines *grāma* as the habitation of *brāhmanas*, their hired labourers and *śūdras*, that *khurvaṭa* is on the bank of a river and of a mixed character, one side being a village and the other a town. Saunaka quoted by the *Rājanīti-kaustubha* ( pp. 103-4 ) defines *khota* as a place where *brāhmanas*, *kṣatriyas* and *vaiśyas* reside, that a place where all castes reside is called a town, that *brāhmanas* householders should be established on soil that is whitish and has sweet odour, *kṣatriyas* should be established in towns where the soil is reddish and wafts a sweet odour and *vaiśyas* on yellowish soil.



## CHAPTER VII

### KOSA (TREASURY OR FINANCE)

Kaut. (II. 1) states that a king whose treasury is depleted preys upon the citizens and the rural population and (II. 8) very <sup>231</sup> rightly remarks that all undertakings depend upon *kośa* (financial position of the king), therefore the king must pay the first attention to *kośa*. Gautama (as cited by S. V. p. 46) holds that *kośa* is the basis or support of the other six elements of the State. The Śāntiparva 119. 16 calls upon the king to guard his finances with great effort, since kings depend upon *kośa*, which tends to the prosperity (of the kingdom). Kām. XIII 33 states that it is on the lips of all that the king is dependent on *kośa*. Śānti 133 contains a eulogy of *kośa*. The Viṣṇudharmottara II. 61. 17 says that *kośa* is the root of the tree of State. The two great pillars of the Indian States in ancient India were the revenue and the army. Manu VII. 65 says that *kośa* and the government of the realm depend on the king. I. e. they should be the personal concern of the king. Yaj. (I. 327-328) recommends that the king should personally look into the income and expenditure every day and keep in his treasury buildings whatever is brought by those who are appointed to bring gold and wealth. Kām. V. 77 and Śakra I. 276-278 say the same. The Rājataran-ginī (VII. 507-508) tells us that king Kalāśa of Kashmir (1063-1089 A. D.) kept accounts like a merchant, closely watched income and expenditure and had a clerk by his side with chalk and *bhūrja* (birch leaf) to write upon. The principal means of filling the treasury is taxation. It is therefore necessary to consider first the principles of taxation as evolved by our writers. The first principle was that the king could not levy, according to the smṛtis, taxes at his pleasure or sweet will, that the rates of taxes which the king was entitled to levy were fixed by the smṛtis and varied only according to the

231. कोशमूलाः कोशदूराः सधर्मिणाः । तस्मात्पूर्वं कोशानवेक्षेत् । कीदृश्य II. 2. कोशश्च सर्वं १३३० पलमात्रमात्र राजभिः । कोशमूला हि राजानः कोशो वृद्धिकरो भवेत् । शान्ति 119. 16 ; कोशदूरी हि राज्ञेति महादुः सार्वभौमिकः । कामन्दक XIII. 33. This last occurs in बुधच. p. 36 ; कोशस्तु सर्वथा अभिसेरस्य इत्याह गौतमः । सम्बुद्धकाय-हृत्तीर्णमिति । अ. नि. p. 46.

commodity and also according as the times were normal or there was danger of invasion or some other calamity impending. For example, Gaut. X. 24, Manu VII. 130, Viṣṇu Dh. S. III. 22-23 declare that the king may ordinarily take a sixth part of the grain-crops or produce of the soil, but Kauṭ. (V. 2), Manu (X. 118), Śānti 87, Śukra IV. 2. 9-10 permit the king to take even one-third or one-fourth part of the crops in times of distress (āyud). It has however to be noted that Kauṭilya requires the king to beg (yāceta) of the people for this heavy taxation, he employs the word *pranaya* (request) for such demands, such taxation was not to be levied from inferior lands, and he expressly says that such a demand for excessive taxation is to be made only once and not twice in the same distress.<sup>232</sup> Śānti (87. 26-33) contains a specimen of a long address to be given to the people when a king demands higher taxation in danger (such as 'If the enemy invades you, you will lose all including even your wives, the enemy will not restore to you what he robs you of' &c.). The word 'pranaya' occurs in this sense in the Junāgadh Inscription of Rudradāman (E. I. vol. VIII. p. 36 ll. 15-16). Another principle laid down in somewhat poetical and picturesque language is that taxation should be felt by those taxed as light and not heavy or excessive. The Udyogaparva<sup>233</sup> (34. 17-18) states 'just as a bee draws honey but at the same time leaves the flowers uninjured, so the king should take wealth from men without harming them. One (a bee) may search each flower (for honey) but should not cut the very root just like a garland-maker, but not like a coal-maker'. Manu (VII. 139 and 140) laconically puts the matter thus 'just as the leech, the calf and the bee take their sustenance little by little, so must the king draw from his kingdom annual taxes little by little. Let the king not cut up his own root (by levying no taxes) nor the root of others by<sup>234</sup> excessive greed'. Śānti (88

232. कोशलमोक्षः मनुष्यकार्यकृच्छ्रः संसृष्टीयात् । अनपदं महान्तमपयमानं वा देवमानुषं मनुष्यान्मन् धान्यवर्षांश्च तुवीर्यं चतुर्थं वा चाचेत् ।... इति कर्षकेषु वचनः ।... इति अथक्षारिषु वचनः ।... सकृदेव न द्विः वयोऽप्यः । अर्थशास्त्र V. 2.

233. यथा मधु समादत्ते रक्षन् पुष्पाणि वद्वद्भुः । तद्वदर्थान्मनुष्येभ्य आद्यादवितिंसिवा । पुष्पं पुष्पं विचिन्वीत मूलच्छेदं न कारयेत् । मालाकार इवाप्तमे न यथाङ्गारकारकः ॥ उद्योग 34. 17-18. वराहर् I. 62 is the same as the last of the two. Compare यम-पद् 49 'यथापि भूमौ पुष्पं वण्णमर्थं अहेतुये । वदेति रसमाद्यात् एवं वाने सुनीं चरे ।'

234. यथा राजा च कर्ता च स्वाहात् कर्मणि भागिनौ । संश्रयं तु तथा राजा वनेषाः सततं कराः ॥ मोक्षिन्धातुजालनो मूलं परेषां चापि तुष्णया । ईशाहाराणि संश्रयं राजा संश्रितद्वर्षाः ॥ शान्ति 87. 17-18; मनु. VII. 139 has the half मोक्षिन्धात् &c.



4-6) states that the king should draw (taxes) from the realm lightly in the way the bee draws honey from the trees, he should do so in the way of the calf and should not bruise the udders (as the calf does not). Those verses also refer to the action of the leech, of the tigress carrying her cubs between her jaws and the rat gnawing at the feet of sleeping men. These ideas pervaded society so much that the same figure of the bee is instanced as regards the Buddhist bhikkhu's importunity for alms in the Dhammapada (verse 49). The king should act like a gardener who prepares garlands without harming the trees and their leaves and should not act like one who prepares coals from trees (Śānti 71. 20)<sup>235</sup>. Manu VII. 139 requires that the king should not through greed tax the subjects heavily, as he would thereby cut off the roots (i. e. prosperity and contentment) of the people, nor should he cut off his own roots (i. e. reduce himself to bankruptcy) by levying no taxes. A third principle of taxation was that when increasing taxes the rise should be gradual and a little at a time (Śānti 88. 7-8). Taxes were to be recovered at a proper time and proper place (Śānti 88. 12 and Kām. V. 83-84)<sup>236</sup>. When taxing traders the king should make allowance for the price they had to pay, for the chances of selling the commodity (in his kingdom), the distance over which the merchandise was brought, what they must have spent for their food and condiments and the cost of guard-

235. महाकारिणो राजन्स्य माङ्गारिकोपमाः । शान्ति 71. 20; vide शुक्लनीतिसार IV. 2. 113 for the same figure.

236. आद्वयित धने काले विषयैरिदृशे । यदा गौः पाल्यते काले दूयते च तथा राजा न कामन्दक V. 83-84. One may note the Moscow decree that all male and female peasants between 18 and 45 years were to work six days yearly without pay on roadwork. With the above principles of taxation one may compare Adam Smith's famous canons: (1) the subjects of every state ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities i. e. in proportion to the revenue which they respectively enjoy under the protection of the State. (2) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought to be clear and plain to the contributor and to every other person. (3) Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it. (4) Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury (vide 'Wealth of nations' ed. by Rogers, 1869, vol. II. pp. 414-416.)

ing the merchandise (Manu VII. 127 = Śānti 87. 13-14)<sup>227</sup>. In the case of artisans, before taxing them, the king has to pay regard to the labour and skill involved and to the necessities of life required by them (Śānti 87. 15). Every one, however poor, must contribute something to the finances of the realm. Manu (VII. 137-138) says that even a very poor man who maintains himself by following some occupation should be asked to contribute every year something in the nature of *kara* (a tax), while workers (like cooks), artisans (like blacksmiths), śūdras who subsist by manual labour (like porters) should be asked to contribute one day's work to the king in a month. Vids Gaut. X. 31-34, Visnu Dh. Ś. III. 32 for the same. But Śukra IV. 2. 121 says that workers and artisans should do one day's work for the king gratis in a fortnight. Gaut. X. 34 adds that the king must supply them with food on the day they work gratis. The importance of a gold and silver reserve was well understood. Kām. (IV. 62-64) says<sup>228</sup> that the king's *kosa* should have many sources for filling it, but few outlets of expenditure, it should be full of all desired kinds of wealth, guarded by trusty officers, rich in pearls, gold and jewels, it should have been acquired according to *śāstric* rules, be capable of bearing great strain of expenditure and that *kosa* is to be preserved only for the purpose of securing the two goals viz. *dharma* and *artha*, for affording maintenance to the servants engaged by the king and as a safeguard against calamities. Śukra IV. 2.3 remarks that *kosa* is accumulated for the upkeep of the army and for the benefit of the people and for performing sacrifices. Gaut. X. 28-29, Manu VII. 128, VIII. 306-308, Nār. (prakṛnaka 48) and others say, as has been already stated, that taxation is meant for the protection of the subjects and that it is the king's wages (*vedant*) for the protection he affords. Manu IX. 305 compares the king taking taxes to the sun that produces vapour from the seas (in order to return it in the form of rain, as the Raghuvamśa I. 18 very happily puts it). Kām. (V. 78-79) enumerates eight principal sources (called *aṣṭavarṇa*) of filling the treasury

227. विकर्षं कर्मकरान् भक्षं च सपरिच्छदम् । योमलेन च संवेद्य वनिजां कारयेत्तराम् । शान्ति 87. 13, Manu VII. 127 reads भक्षं च सपरिच्छदम् ; उत्तराणि दानवृत्तिं च विना संवेद्य चासकम् । शिष्टं वनि करानेवं विहितम् ; वनि कारयेत् । शान्ति 87. 15.

228. यज्ञादासोऽप्यग्निः प्रायः संपातः पुनित्वेवतः । ईप्सितद्वयसंपूर्णो ह्यथ आग्नेरधिष्ठितः ॥ सुजातमकरनाथः पितृवैकामहोचितः । धर्मोक्तिं च यमसहः कोपः कोपज्ञसंमत्तः ॥ धर्मोक्तोत्पत्त्यर्थं युर्यानां भरणाय च । आपवर्षं च संरक्षणः कोपः कोपना मदा ॥ काम. IV. 62-64 quoted in राजर्षिनिबन्धनाकर II. 34.



through the action of the heads of the departments viz. agriculture, trade-routes (both on land and water), the capital, water embankments, catching of elephants, working mines and collecting gold &c., levying wealth (from the rich), founding towns and villages in uninhabited spots. The *Mānasollāsa* (II. 4 verses 539-540 p. 77) advises the king to spend ordinarily three-fourths of the yearly revenues and save one-fourth. Śūkra (I 315-317) prescribes that the king should save  $1/6$  of his total annual income and should spend  $1/2$  of the whole on the army and one-twelfth each on charity (to the learned, the poor and helpless &c.), ministers, inferior officials, and his private purse or expenses. Śūkra IV. 2. 26 requires the king to have as much stock of grain as would be required for three years' consumption in his country. In IV. 2. 13 he sets before the king the impossible ideal that his treasury should be so full that he can support his army for 20 years if no taxes from agriculture or tolls were raised or no fines were recovered. The *Mānasollāsa* (II. 4. 394, 397 p. 64) says that the king's treasury should be always full of gold, silver, jewels, ornaments and costly clothes, that pure gold in the form of *niṣka*s (coins) or bars or ornaments should be held in the treasury. Kauṭ. (IV. 3) as stated above permitted the king in famines to make the rich disgorge their wealth. In V. 2 he remarks that if after making special requests for additional taxation, when the treasury is empty and some danger is impending, to the cultivators, merchants, wine-sellers, prostitutes and those who rear pigs, poultry, cattle &c., the king may request the rich to give as much of their gold as they can and the king may honour them by bestowing on them a post at his court, or the dignity of an umbrella, a turban or some decoration in return for their wealth<sup>239</sup>. He permits the king in calamities to take away the wealth of the corporations (*śaṅghas*) of heretics and of temples also, to set up all of a sudden on one night a god or a platform (*caitya*) for a holy tree or a sacred place for a man of miraculous powers and provide for fairs and merry gatherings there and secure the necessary money<sup>240</sup>. He

239. सारो वा हिरण्यमादवापाचेतः । ययौषकारं वा स्वयं वा बहुपदरेणुः स्वान-  
वपरेण विपुलाभौ वा हिरण्येन यच्छेत् । अर्थशास्त्र V. 2.

240. Compare note 164 above about the Mauryas who wanting money set up images, according to Patañjali. The *Rājatarāṅgiṇī* (V. 166-177) describes the exactions of king Śaṅkara-varman of Kashmir (883-902) A. D. He plundered 64 temples under the pretext of supervision. He imposed taxes on *gṛahakṛtya* (i. e. on *upanayana*, marriages &c.). In the 11th century king Harṣa of Kashmir plundered most of the temples (*Rājatarāṅgiṇī* VII. 1090).

recommends many other tricks and dodges for securing money, which are passed over. Perhaps the only redeeming feature of these devices is that Kautilya is careful to point out that they were to be employed only against the seditious and the irreligious and not against others (V, 2 ' *evam dūṣṣeṣvadhūrmikeṣu varietā netaṛeṣu* '). Vide *Nītivākyaśmṛta* (*kośa-samuddeśa*) p. 205 for similar provisions to replenish a depleted treasury. The *Parasūramapratāpa* (*Rājavalabhakāṇḍa*, folio 27 b) quotes a verse which recommends resort to alchemy for replenishing the treasury<sup>240</sup>. Śukra IV, 2, 11 advises the king when in financial difficulties to promise interest to the rich and take their wealth and to return it with interest when the difficulties are got over<sup>241</sup>. Śānti (88, 29-30) asks<sup>242</sup> the king to honour the wealthy men in his kingdom, since they constitute an important element of the realm and are the most eminent among all beings and to request them 'confer along with me favours on the people'.

Several reasons are assigned for people's payment of taxes to the king. Gaṇt. X, 28 says that they should do so because he protects them. In some places the idea put forward is that taxes are the wages (*vetana*) of the king and that the subjects made a contract with the king Manu to that effect. Vide Śānti 67 and 70, 10, Band. Dh. S. I, 10, 1, Nār. 18, 48, Kaut. I, 13 (quoted on p. 21 above). Kāt.<sup>243</sup> (verses 16-17) states that as the king is the owner of the earth but not of other kinds of wealth, he is entitled to get the sixth part of the produce of land and that since human beings reside on land they are declared to be owners (in ordinary parlance, but they have only a qualified ownership). Several kinds of taxes are mentioned in the *dharmaśāstras*, *arthaśāstras* and the inscriptions. The oldest

240a. पातुषाद्वचोर्गैश्च विविधैर्धनयुक्तम् । तान्नेन साधयेत्स्वर्णं राज्यं बहुलं साधयेत् ॥ पराशुरामः. (राज. folio 27 b).

241. धनिकेभ्यो भूमिं दत्त्वा स्वापत्नीं वयुने हरेत् । राजा स्वान्नसमुत्तीर्णस्तत्सं वयान्नप्राप्तिवत् ॥ शुक IV, 2, 11.

242. धनिनः पूजयेदित्थं धानाच्छादयन्भोजनैः । वस्त्राभ्यामुपवृद्धीर्धनं यज्याः सह मयेति वै ॥ अहमेतन्महाजायते धनिनो नाम भारत । ककुद्दं सर्वभूतानां धनस्थो भाव संशयः ॥ शांते 88, 29-30.

243. कात्यायनः । दृष्टानी तु स्मृतौ राजा गान्धर्वपरम् सर्वदा । तत्कलत्रं हि वज्रनागं प्राप्नुयान्मानयधैरुः ॥ भूतानां तज्जिवास्मिन्वास्मादित्थं नैन कीर्तितम् । राजमीदृष्टे. p. 271. Vide H. Dh. vol. II, pp. 865-869 on the question of the king's ownership of land. राजनीतिः explains 'तज्जिवास्मिन्वास्मादित्थं नैन कीर्तितम् । स्वामित्वं राज इति शेषः'. I interpret differently.



word for a tax paid to the king is 'balli'. Rg. VII. 6. 3<sup>244</sup> and X. 173. 6 speak of the common people as 'ballibrt' (bringers of *balli*, tribute or tax for the king). In the Tai. Br. (II. 7. 18. 3) it is said 'the people bring balli to him'. In the Alt. Br. (35. 3) the *vaśga* is characterized as 'ballikrt' (payer of taxes to another), since brāhmanas and ksatriyas were mostly exempt from taxation. Vide Prof. Hopkins' 'Social condition of the ruling class' J. A. O. S. vol. XIII p. 89 and Fleck p. 119 (as to the evidence of the Jātakas on taxation). Manu VII. 80, Matsya 215. 57, Rāmāyaṇa III. 6. 11, Viṣṇu Dh. S. III. 22 employ the word 'balli' in the sense of the 6th part of the produce of land that the king levied as tax. In the Rummīndel Pillar Inscription of Aśoka (Corpus I. I. vol. I. p. 164) it is said that the village of Lummīni was made free from the payment of 'balli', but had to pay one-eighth share.<sup>245</sup> Here 'balli' is contrasted with 'bhāga' which is a general term. The word 'kara' appears to mean a tax in general. Vide Āp. Dh. S. II. 10. 26. 10, Manu VII. 128, 129, 133, Vas. 19. 23, Viṣṇu Dh. S. III. 26-27. The word 'bhāga' (share) is also general and means the king's dues on land, trees, drugs, cattle, wealth &c. Vide Manu VII. 130-131, VIII. 305, Viṣṇu Dh. S. III. 25. This meaning of 'bhāga' is ancient. We saw above (p. 112) that *bhāgadugha* is one of the ratnings of the king. The Amarakośa treats *balli*, *kara*, and *bhāga* as synonymous.

The word 'sulka' generally means the tolls or customs duties levied from vendors and purchasers on merchandise carried into or out of the kingdom (Śukranītisāra IV. 2. 108). The Mahābhāṣya on the *vārtika* 'āyasthānebhyaṣṭhak' on Pān. IV. 2. 104 gives *śaulkika* and *gaulmika* as examples, indicating thereby that *sulka* or toll was levied as a source of income (*āya*) at the toll-gate.

The principal and perennial sources of income to the state were three viz. the king's share of the produce of land, tolls and customs duties, fines levied from wrongdoers or defeated litigants (vide Śānti 71. 10 and Śukra IV. 2. 13). From this and from Manu X. 119-120 it appears that the principal tax-payers

244. स निक्षया बहुषो यज्ञो अग्निविश्वक्रे बलिहृतः सरोभिः ॥ ऋ. VII. 6. 5 : अथो न इन्द्रः केवलीविशो बलिहृतस्तस्मै ॥ ऋ. X. 173. 6 : हरन्वयस्मै विशो बलिम् । ते. ब्रा. II. 7. 18. 3.

245. लुमिनिहाम उबलिक (उडलिक) कदे अडमगिदे (अडमलिकः) च । Corpus I. I. vol. I. p. 164.

were agriculturists, traders, manual workers and artisans. In *Mamū* VIII 307 quoted in the *Dandavivēka* of Vardhamāna (p. 5) it is said that the king who, without affording protection, levies *hali*, *kara*, *śulka*, *pratibhoga* (*pratibhāga* in the printed *smṛti*) and *daṇḍa* (fines) goes at once to hell and Vardhamāna explains *kara* as the dues recovered every month from villagers and city-dwellers (every month or twice a year in *Bhādrapada* or *Pauṣa* according to *Kullūka*), *śulka* as the twelfth share recovered from traders, *pratibhoga* as the dues in the form of fruits, flowers and vegetables presented every day. A few remarks on these and other taxes must be made here. *Mamū* VII 130, *Gaut.* X 24, *Viṣṇu Dh.* 8 III 22, *Mānasollāsa* (II 3. 163 p. 44) and several others prescribe that the king is entitled to the 6th, 8th or 12th part (only sixth in *Viṣṇu*, also 19th in *Gaut.*) of the yield of grain from land. *Bṛhaspati* and the *Viṣṇudharmot-tara*<sup>246</sup> (II 61. 60-61) quoted in the *Rajamitiprakāśa* (pp. 262-263) make it clear under what circumstances these different shares are to be taken: viz. the king takes 1/6 of *śikadhānya* (awned or bearded grain like wheat and barley), 1/8 from *śimbidhānya* (grain in pods), 10th part from crops grown on land that was fallow for many years, 1/8th from lands sown in the rainy season and one-sixth from lands that have spring crops. The tax was to be paid once every year or once in six months according to the custom of the country. The varying rates prescribed by Kautilya have been indicated in describing the duties of the *atādhyakṣa*. *Sakra* (IV. 2. 121-122) gives a salutary rule that if a cultivator constructs a tank, a well or an artificial water-course or brings under cultivation land previously fallow, the king should not levy a tax thereon till the person making the expenditure has recovered twice the amount spent by him. *Kauṭ.* (II 1) provides that the king may show favour (*amukti*) to the cultivators by supplying them with seed, cattle and money and that they should return the advances by easy instalments and that the king shall bestow favours and remissions (*parihāra*) in such a way that they might tend to swell the treasury and not tend to its

246. विष्णुधर्मोत्तरे । शूकधर्म्येषु बहुभाने शिखीधान्येऽप्यवहन् । राजा षष्ठ्यं-  
मादादेशकालावृत्ततः ॥ शुद्धशिम्यशिरिके धान्ये षष्ठ्यं नोनोको द्वादशे दशमे वा मातः ।  
तथा च सुवृत्तयः । दशादशं वृत्तमणिं द्वादशवर्षावहम् । शिखीधान्यसम्पत्तौ कृष्य-  
माणाववहन् ॥ ... स एवाह । देशस्थित्या बलिं द्वादशं वषासवधिकम् । एक धर्मः  
समाकृष्यतः कीमाशानो वृत्ततः ॥ राजमतिक्र. pp. 262-263 and राजधर्मशास्त्र p. 63  
(for last two verses).



depletion.<sup>242</sup> It has already been stated that according to the *smṛtis* the ordinary share of the king was one-sixth, but that in case of the danger of invasion or similar calamity he was allowed to raise it to one-fourth. Megasthenes (Fragment I, p. 42) says that no person is permitted to own land and that besides the land tribute people pay into the royal treasury a fourth part of the produce. This shows that the tax on land was very heavy in the times of Candragupta probably owing to his wars to drive away the Greeks and the huge armies that he had to employ. *Manu* VII. 130, *Gaut.* X. 25, *Viṣṇu Dh. S.* III. 24, *Mānasollāsa* (II. 3. 163 p. 44) hold that the king is entitled to the 50th part of the cattle reared by herdsmen and of the interest earned by those who lend money at interest. This last appears to be analogous to modern income-tax. The *Śukranitisāra* IV. 2. 128 makes the tax to be  $\frac{1}{25}$  on the interest earned by money-lending.<sup>243</sup> *Viṣṇu* adds cloth to these two. *Manu* VII. 131-132, *Gaut.* X. 27, *Viṣṇu Dh. S.* III. 25, *Viṣṇudharmottara* II. 61. 61-63 and *Mānasollāsa* lay down that the king is entitled to a sixth part of trees, meat, honey, clarified butter, perfumes (like sandal-wood), medicinal plants (like *quāci*), rasa (salt &c.), flowers, roots (like turmeric), fruits, leaves (like palm leaves), vegetables, grass, hides, articles manufactured from bamboo slips, earthenware, articles prepared from stones. *Viṣṇu* adds deer hides to these.

*Sulka* is of two kinds, what is levied on goods carried by land and what is levied on goods carried by water (*Mit.* on *Yaj.* II. 263). *Gaut.* X. 26 and *Viṣṇu Dh. S.* III. 29 state that the *sulka* is 1/20th part on merchandise for sale (bought and sold in the country itself) which is interpreted by some (like *Haradatta* and *Nandapāṇḍita*) as meaning that 5 per cent of the price of articles sold should be taken by the king as tax, while the *Rājanītiprakāśa* (p. 264) explains that the king is entitled only to five per cent of the difference between the cost-price and the sale price of merchandise. *Manu* VIII. 398 also is susceptible of these two interpretations, as the commentaries of *Medhātithi* and *Kullāka* show. The *Viṣṇu Dh. S.* (III. 29-30) prescribes that the king takes one-tenth on merchandise produced in his own country and one-twentieth on goods imported from a foreign

242. भाग्यवद्भिरन्येभ्यो नानुसूत्रीनामन्यसुखेन वयः । अनुग्रहपरीहार्तं चैव्यो  
कोऽनुसूतिकरी इत्याह । कौटिल्य II. 1. p. 47.

243. वार्युत्पिनास कौलोदाहृतविक्रीक्षे हरेन्दुः । सुक्र. IV. 2. 128.

country. Yaj. II. 261 says that the *sulka* on goods is twentieth part of the prices of the goods. Kauṭ. (II. 21) in his chapter on the superintendent of tolls (*sulkādhyakṣa*) sets out several rules, of which a few interesting ones are given here. Commodities intended for marriage or taken by a bride from her parents to her husband or meant as presents or for the purpose of sacrifices or the *accouchement* of women or for the worship of gods, or for the ceremonies of *crula*, *upanayana*, *gāthina*, or for the observance of a *vrata* or for the consecration of a person for a sacrifice and for other special ceremonies shall be allowed to go free of tolls. Whatever commodities would cause harm to the realm or are useless should be destroyed; whatever is of great benefit and seeds not easily available should be allowed to be imported without charge<sup>249</sup>. He further says (II. 22) that *sulka* is levied on exports and imports of merchandise and that on imports the tax will be one-fifth of the price of the commodities (as a general rule) and prescribes varying rates ( $1/6$ ,  $1/10$ ,  $1/15$ ,  $1/30$ ,  $1/25$ ) on different kinds of articles. In II. 28 (on the superintendent of shipping) Kautilya gives further rules some of which have been already noted. He prescribes rules for ferries also, viz. that *brāhmanas*, ascetics, children, very old people, sick man, messengers, pregnant women are to be provided with free passes by the superintendent enabling them to use the ferries. A man with a load and small animals were to pay one *māṣa* at a ferry, a cow or a horse two *māṣas* and so on. The *Mānasollāsa* (II. 4. vv. 374-376 p. 62) prescribes that the king should well guard all harbours (*velā-pura*) that are near the sea, that when the boats of sailors residing in his own country return to the harbour the king should charge one-tenth (of the price of goods brought) as the duty and that when foreign boats are driven to his harbour by an unfavourable wind, the king should confiscate all their merchandise or may give a little to the owners of those boats. In this connection a very interesting inscription may be referred to. The Moṭupalli pillar inscription<sup>250</sup> of the Kākatiya king Ganapatideva (of

249. राजदीहकारं मानसुखिन्पादकलं च यद् । महोपकारकमुत्तुल्ले कुर्वाणं च दुर्लभम् ॥ कौटिल्य II. 21, verse at end.

250. दुर्गराजानः पंतपात्रेभ्यश्च देवादेष्टान्नायुतेषु दुर्वातेन समापतितेषु भग्नेष्वतीर्थ-संगतेषु च संयतानि करिद्वारगन्तव्यानि वस्तुनि सज्जलानि यतादुपहरन्ति । वयमपि माणे-भ्योपि मीमांसा धमयितुं सद्गुणान्कृतमवासाहतेभ्यस्तेभ्यः वस्तुमुत्तुल्ले कृत्वा कीर्त्यं धर्माच्च सर्वं विवर्तयामहे । उत्तुल्लेखपरिहारः, then a Telugu passage about the dues. Vide E. I. vol. XII. p. 195.



1344-45 A. D.) issues (E. I. vol. XII p. 195) a charter of security (abhaya-sāsana) to the sailors who ply between towns in different countries, islands and continents: 'when ships that made voyages from one country to another were driven or were shattered or touched at a place that was not meant as a place of call, owing to unfavourable winds, former kings forcibly took away all commodities therein such as gold, elephants, horses &c.; but we, considering that wealth is dearer than life itself, have with kindness decided to give everything except the fixed *śulka* to those sailors who undertake the great venture of crossing the sea, so that thereby we shall secure fame and righteousness; the *śulka* fixed is as follows'. About *śulka* to be levied on goods brought by the sea the Baud. Dh. S. (I. 10. 15-16) prescribes that it is 10 per cent of the cargo except one best article (which is totally exempted). In the Kharepatan grant of the Śīlāra king Ratjarāja dated śaka 930 it is provided that one golden *gāḍiyāga* was levied as duty on each vessel that came from another country (*dvīpāntarīyāta-vahitrāṭ*) and one golden *dharmāga* had to be paid on each vessel coming from the district of Kandalamūliya excepting Cemulya (modern Cheni) and Candrapura. Vide E. I. vol. III, p. 292 at p. 301. Śukra (IV. 2. 109-111) lays down some very reasonable rules viz. on the same commodity *śulka* is to be taken in the same country by the king only once and never more than once; the king may take either  $1/16$ ,  $1/20$  or  $1/32$  from the vendee or vendor; no *śulka* is to be taken from the vendor when he has to sell his goods at the same price at which he bought them or for less than the cost price; the king should always take from the buyer the proper *śulka* after seeing what profit he is going to make. Nār. (sambhūya-samutthāna verses 14-15) lays down that whatever is to be used by śrōtriyaś (brāhmaṇas learned in the Vedas) for domestic purposes is exempt, but not what they may employ in trade; the gifts received by brāhmaṇas, the property of stage-players, whatever is carried on a man's shoulders—on all these no *śulka* must be levied. The exemption of brāhmaṇas and others from taxation has already been dealt with in H. Dh. vol. II. pp. 143-145. Gaut. X. 9-12, Āp. Dh. S. II. 10. 26. 10-16, Vas. I. 42-46 and 19. 23-24, Manu. VIII. 394 exempt a learned brāhmaṇa, the women of all varṇas, all boys before the signs of puberty appear, all those who stay with a teacher for study, ascetics who are intent on dharma, śūdras that do menial work such as washing the feet of higher varṇas, the blind, the deaf and dumb, the diseased, the cripple, an old man of 70 years or

more. Though these really required more protection than most people, humanity and higher feelings made them exempt from taxes from very ancient times. The claims to exemption were probably exaggerated and not respected in practice. For example, Nārada (VI. 14) states that the king is not to levy tolls or customs duties on articles required by śrotriyas for domestic use but if they engaged in trade they had to pay taxes on merchandise.<sup>251</sup> The Mit. on Yaj. II. 4 states that the six exemptions mentioned in Gaut. (VIII. 12-13) apply only to a very learned brāhmaṇa and not to all brāhmaṇas. Manu. VII. 133 provides that a king even when he has lost everything should not levy a tax on śrotriyas and relying on this the Vaijayanti explains Viṣṇu Dh. S. III. 26 as referring only to learned brāhmaṇas. The Rāmāyaṇa (III. 6. 14)<sup>252</sup> states, differing from other authorities, that the king shares one-fourth of the merit of *munis* (ascetics) dwelling in his kingdom. There was a corresponding liability on the king: viz. he shared half and half in the demerit due to the sins committed by the subjects that are not properly restrained by him (Yaj. I. 337). Manu and Viṣṇu. Dh. S. III. 28 and Viṣṇudharmottara II. 61. 25 say that he reaps the sixth part of the sin of his subjects.

Kaut. in II. 15 mentions numerous kinds of taxes or dues that were levied by the king. It is not possible to explain many of the terms used by him. In the ancient inscriptions, when making grants of a village and the like, it is usual for the kings to specify the exemptions from taxes and dues that went with the grant. Such exemptions were called *parihāra*, which word occurs in Kautīliya and also in the Hathigumpha Inscription of Khāravela (in the 2nd century B. C., E. I. vol. xx at p. 9) where we read '*banhanānam jātīm parihāram dadāti*'. In certain early records even, these exemptions are said to be eighteen, e. g. in the Hirabadagalli plate of Śivaskandavarman (E. I. vol. I. p. 6) and<sup>253</sup> the Omgudu plate of Vijayaskandavarman

251. सदा श्रोत्रिवचसांश्च सुहृत्कामदातुः प्रजापता । दृष्टोपयोगि पदचैवा न ह  
वानिश्चयमस्मि ॥ नाट् VI. 14; ब्राह्मणेभ्यः करादानं न कुर्यात् । विश्वधर्मसूत्र III. 26,  
on which वैजयन्ती says 'परंतु श्रोत्रिवेभ्यः । शिवमाणो ... करयिषि मानवात् ।'

251a. यश्चकरोति परं धर्मं सुनिर्मूलप्रलापनः । तत्र राजभक्तुर्मानः प्रजा धर्मेण रक्षतः ॥  
रामायण, अरण्य 6. 14.

252. The passage in the plate of Śivaskandavarman (E. I. vol. I, pp. 8-9) is rendered by Dr. Bühler as 'this garden ..... is to be free from taxes, free from the taking of sweet and sour milk, free from noobles about



(E. I. 15 p. 250). Vide H. Dh. vol. II pp. 864-865 and notes thereon for grants containing names of numerous taxes that were remitted to the grantees and 'Pandyan kingdom' by Prof. Nilkanta Śāstri p. 217 on the same subject.

Fines as a source of revenue will be discussed in the next section about 'law and justice'. The king had numerous other sources of income. Kaut. (II 12) describes the duties of the superintendent of mines. Every thing dug up from mines belonged to the king (Visnubharmasūtra III 55). According to Manu VIII. 39 and Medhātithi thereon the king is entitled to a half (or some share  $\frac{1}{2}$ ,  $\frac{1}{3}$  &c.) of the ore dug out of mines, as he is the lord of the earth and gives protection. In modern times under sec. 69 of the Bombay Land Revenue Code, Government have a right to all mines and minerals. The Parāsurāmapratāpa<sup>222a</sup> quotes a verse: 'Brahmā arranged that the king was (to be) the owner of all wealth and specially (wealth) that is inside the earth,' while Kāt. (16-17) says (vide note 243) 'the king is declared to be the lord of the land, but never of other kinds of wealth; therefore he should secure the sixth part of the fruits of land, but not otherwise at all. Since human beings reside on it (land) their (qualified) ownership thereof has been declared'. For further discussion of the theory of the king's ownership of all land, vide H. of Dh. vol. II pp. 865-869. The State itself manufactured salt, took its share in salt manufactured by private persons and levied  $\frac{1}{4}$  as State dues on imported salt. Kautīlya mentions ten kinds of revenue from mines. The

(Continued from the last page)

salt and sugar (alpagaḷacchobham—alapaṇa—goda—kṣobham), free from taxes, forced labour, ... free from the taking of the axes in succession, free from the taking of grass and wood, free from the taking of vegetables and flowers; with these and other immunities of eighteen kinds it must be exempted &c.' (evamādikehi atthārasaṃjātīpurīhārehi). Vide Vilavattī grant of Pallava king Simhavarma for a long enumeration of taxes collected from villages in South India in E. I. vol. 24 p. 296 and a copperplate grant of the Śiṃhāra king Aparājita dated *saka* 913, where in granting a garden to a brāhmaṇa occur the following words 'मादङ्गः सङ्गददशापराधः यथानि-  
धायेकदोषपादाः इतरसमस्तादुवादीयक-कुमारिमाहस्यप्रतिद्वन्द्वदोषसन्निभः पूर्वदसदेव-  
द्रापदद्वन्द्वदोषवजितः समस्तापर्यायसहितः ..... दसः in 'Important inscriptions from Baroda' vol. 1 edited by Mr. A. S. Gadre (p. 55 at p. 61). कुमारिमाहस्य appears to mean the 'fine levied for violating a virgin or her modesty'.

222 a. धनानामीश्वरा राजा बह्वज्जा परिकल्पितः । दूततामां चिक्षेवेण भर्तासौ  
विद्वधाधिपः ॥ ७. In परशुराममहाय folio 27a.

Mānasollāsa (II. 3, verses 332 and 361) asks the king to guard mines of gems, gold and silver and declares that the Creator made the king the ruler over all wealth and especially over what is inside the earth. Rudradāman (150 A. D.) boasts that he filled his treasury by means of *balli*, *śulka* and *bhāga* levied according to the sāstras and that his treasury overflowed with heaps of gold, silver, diamonds, *lapis lazuli* and other gems (E. I. vol. VIII p. 36 at p. 44). Kaut. (IV. 1) says that those who sweep the dust (near mines &c.) should get one-third of the valuable things found and the king should get two-thirds and all jewels. The king had also monopolies in certain matters. He alone could catch elephants. Kaut. (II. 31-32) and Mānasollāsa (II. 3, pp. 44-58) deal with this matter, the latter describing several methods of catching elephants. Medhātithi<sup>223</sup> on Manu VIII. 400 says that kings have a monopoly as to elephants because it is well-known that they are most useful to them and he specifies certain monopolies such as those in saffron, silken cloth and wool, horses, pearls and jewels. Megasthenes (Fragment XXXVI. p. 90) states that a private person was not allowed to keep an elephant or a horse and that those animals were held to be the special property of the king.

The king recovered a sort of road cess through officers called *antapāla* (guardians of borders or boundaries) viz. 14 *pāna* on each cart loaded with merchandise, half a *pāna* on each head of cattle, 1/4th *pāna* on minor quadrupeds, and one *māṣa* on a load carried on a man's shoulders (Kaut. II. 31 p. 111). Śukra IV. 3. 129 permits for the repairs to the roads a tax on those who use roads. Revenues were raised in numerous other ways such as by charging for stamping weights and measures, by fees levied from keepers of gambling halls, from players, singers and musicians, from prostitutes, from forests and pastures &c. Bṛhat-Parāśara X. p. 282 allows the king in a financial crisis to use even temple funds and make them good when freed from his difficult position. Similarly it allows the king (in difficulty) to take the wealth of usurers, of low people,

223. वाणि मापयामि राज्ञेऽपचोगितया यथा दक्षिणः काश्मीरेषु कुट्टुमपायेषु दड्डोर्णा-  
दीनि यवविदेशेष्वथ दक्षिणार्णवेषु मणियुक्ताः क्षीरिणि । मेघा. on मनु VIII. 400. The  
passage as printed by Mandlik and Gharpure is corrupt. We should rather  
read यथा दक्षिणः । काश्मीरेषु कुट्टुमं मापयेत् दड्डोर्णाक्षीरिणि. Saffron is still a  
monopoly in Kashmir. \* भरकपोषुपायकाः सारविभाने लभेत् । इति राजा राज्ञे च ।  
अर्थशास्त्र IV. 1.



of heretics and prostitutes, as the continuance and prosperity of temples and the others depend upon the king.<sup>224</sup>

The *Rajatarangini* (VII. 1008) notices that a tax was levied on Kashmirians performing śrāddha at Gayā. An inscription of Vikramāditya V found near Gadag dated *śaka* 934 (1012-13 A. D.) refers to taxes levied on upanayana, marriages, vedic sacrifices &c. (E. I. vol. 20 p. 64). It appears that the king of Anahilavād, Siddharāja (1094-1143 A. D.), levied a tax on pilgrims going to Somanātha at the frontier town Bāhuloda and it is said that the tax yielded 72 lakhs of rupees a year, which Siddharāja remitted for the sake of and at the intervention of his mother; vide Boni. G. vol. I. part I p. 172 and *Prahaṇḍha-cintāmaṇi* (p. 84, Tawney). The amount is probably very highly exaggerated in order to glorify Siddharāja, but this shows that the yield of the pilgrim tax must have been substantial. The *Mānasollāsa* in its great desire to help the king with the accumulation of wealth advises the king even to resort to alchemy.<sup>225</sup>

A question may be asked: what were the means of preventing a king from being over-exacting and tyrannical in his taxes? Kaut. (VII. 5. pp. 276-277) cites at great length the causes that lead to the impoverishment of the subjects, to their being greedy and disaffected. Among these he mentions<sup>226</sup> 'not paying what ought to be paid and exacting what ought not to be exacted, not punishing the guilty and severely punishing the guilty, not protecting the people against thieves and robbing them of their wealth'. He then states that when the subjects become impoverished they become greedy and when greedy they become disaffected and voluntarily go over to the side of the king's enemy or destroy their own king. In another

224. वृषस्य पक्षि जातानि देवद्वयपाणि कोशवत् । आद्याय १२५ चात्मानं ततस्तत्र च तत् सिधेत् । विंशं वार्युषिकानां तु कर्ष्यस्वपायि यद्भवेत् । पाण्डित्यमणिः कविर्ज्ञ हरिश्चाली न किरिष्मी । देवनाग्न्यपाण्डित्यपाका मणिकादकः । मणिगार्ग्युषिकाः सर्वे स्वस्थे राजानि सुस्थिताः ॥ बृहत्पराशर X. p. 252.

225. पातुवाद्भययोगैश्च विविधैर्धनैश्च यत् । ताद्रेण साधयेत् स्वर्गं रौप्यं वज्रेण साधयेत् ॥ मानसोद्भास II. 4, verse 327 p. 63. Vide n. 240 above.

226. अद्वयनैश्च देवानामदेयानां च साधनैः । अद्वयनैश्च दुग्धधानां दुग्धधानां चण्डद्वयनैः ॥ ... अरक्षयेद्य कोरेभ्यः स्वानां च परिमोघनैः । ... राज्ञः यमावाहस्यध्यानां योगक्षेमविधायापि । प्रकृतीनां जपो ह्यानी वैराग्यं योषजायते ॥ अग्निः नक्ततो होमं ह्यस्या यान्ति विराजताम् । विरका यान्त्वमिदं वा मर्तारं भ्रान्ति वा स्वयम् ॥ कौटिल्य XII, 5.

place Kautilya (XIII. 1) suggests<sup>237</sup> that a conqueror may employ spies who should encourage the subjects of his enemy suffering from famine, depredations of thieves and wild tribes to tell their king, 'we shall beg the king for favours (remission of taxes or help in the way of seeds &c.) but if he does not agree to bestow favours we shall go to another country'. So the threat of disaffection and migrating to another country were the deterrents against the tyranny of heavy taxation according to Kautilya. Śānti 87. 36 says<sup>237a</sup> that if the vaiśyas (*gomināḥ*, who bore the brunt of taxation) were neglected, they may disappear from the country and dwell in forests. Manu (VII. 111-112) warns kings who through folly rashly oppress their kingdoms that they may ere long lose their own lives and those of their relatives and also their kingdoms. Yāj. (I. 340-341) is even more emphatic and says that the king who seeks to increase his treasury with wealth extracted by unjust means from his realm loses his wealth in no time and meets destruction along with his relatives. 'The fire springing from the wrath caused by the harassment of the subjects does not cease without burning the family, the wealth and the life of the king.' Kātyāyana (v. 19) harps on the spiritual consequences: 'the king who unjustly takes from his kingdom taxes, fines, share of crops and tolls, incurs<sup>238</sup> sin.' Śukra<sup>239</sup> (II. 319-321 and 370) emphasises the keeping of daily, monthly and yearly accounts and the entering of the several items of income on the left side of the account and of those of expenditure on the right. The Nītivākyaṅgīta<sup>239a</sup> refers to the appointment of auditors when there is discrepancy in the items of income and expenditure.

237. दुर्मित्रैर्लैनादरुणपातेषु परिजानपदास्तसादकतः सत्रिणो बभूवुः । राजानमनुग्रहे वाचामहे विरलुपयहाः परत्र गच्छामः । इति । की. XIII. 1.

237a. उपेक्षिता हि नश्येयुर्गोमिनोऽरुणवासिनः । तस्मात्तेषु विशेषेण बभूवुर्व समाचरेत् ॥ शान्ति 87. 36.

238. अन्वायेन हि यो राजात्करं दृष्टं च पार्थिवः । सत्यभावं च द्रुल्लं चाप्यादधीत स पापमाह ॥ काश्यापन प. in राजनीतिय. p. 376.

239. बह्वरे बह्वरे वापि नास्ति नास्ति दिने दिने । हिरण्यपद्मधाण्यादि स्वायम् स्वय-मज्ञेकर्यं ॥ वराधीनं कृते-दनु भयसंज्ञं धने च तत् । ... आपमादौ लिखोत्सन्दर्धं स्वयं वक्ष्यात् यामतम् । याने वार्यं स्वयं दृष्टे वज्रनागे च लेखयेत् ॥ शुक्लनीतिसार II. 321, 370.

239a. आयव्ययविनिर्णयो कुशलकरणकार्यपुरवेभ्यस्तद्विनिश्चयः । नीतिवाक्यवाचन-प. 189 (अमात्यमसूदेश).



## CHAPTER VIII

### BALA (THE ARMY).

Bala is also called *daṇḍa* in Kauṭ. and elsewhere. According to Sumantu *daṇḍa* means 'punishment, corporal or monetary' and the army with its four arms is included by Sumantu under *kośa* (acc. to S. V. p. 46).<sup>260</sup> In the Rgveda we have frequent references to armies, weapons, battles &c. The word *senāni* occurs in Rg. X. 84. 2 where *Manyu* (martial Fury) is invoked to be the Commander.<sup>261</sup> Rg. VI. 75 is full of references to bows, arrows, armour, bow-strings, quiver, charioteer, horses, chariots &c. Kām. (XIII. 34-37) states that the king possessed of a sound financial position increases his depleted army, supports his own subjects and is depended upon even by his enemies. All the following result from the possession of a (powerful) army viz. increase of the wealth of one's friends and enemies and of the (king's) territories, prompt attainment of objects that seemed distant, protection of what is already secured, destruction of the armies of the enemy, the keeping together of one's army. Most authorities agree in saying that troops are of six kinds viz. *manā* (hereditary), *bhṛta* or *bhṛtaka* or *bhṛtya* (hired troops), *śreṇi* (guild troops), *mītra* (troops of an ally or friendly power or feudatories), *amītra* (troops that once belonged to the enemy), *aṭavī* or *āṭavika* (wild tribes as troops). Vide Kauṭ.<sup>262</sup> IX. 2 (first sentence), Kām. XVIII. 4, Agnipurāṇa 242. 1-2, Mānasollāsa (II 6, verse 556 p. 76). The first three works say that each earlier variety of troops is superior to each later one. *Manā* troops corresponded to the modern standing army, since Kauṭ. (IX. 2) prefers them on the ground that they depend on the king for maintenance and are being constantly drilled. They most probably consisted of persons who and whose ancestors got tax-free lands in lieu of military service. The *Sabbāparva* 5. 63 appears to refer to four kinds (omitting *śreṇi* and *amītra*) and *Yuddhakāṇḍa* 17. 24 refers to five (omitting *śreṇi*).

260. इन्द्रः अतुल्यैर्भयं न भवति । अपराधानुसारं शारीरैर्बुधः परिकल्पनीयः ।  
अपनमिसन्निः-सुमन्तुगते अतुल्यैर्भयं कोऽप्यपान्तर्भाव इति । स. वि. p. 46.

261. अग्नीश्व सगो निषिद्धः सहस्र सेनाधीनः सहस्रे ह्यन पथि । ऋ. X. 84. 2.

262. मीलकृतकसेनानि विद्यामिश्रावर्गीयतानां समुदायकालाः । ... पूर्वं पूर्वं चैषां श्रेयः  
सेनावचितुम् । कौटिल्ये IX. 2.

The *Aśramavāśaikaparva*<sup>263</sup> (7.7-8) names five kinds (except *amitra*) and states that *maula* and *mitra* armies are superior to the rest and hired troops and *śreni* troops are each other's equals. This division of armies into various kinds is mentioned in the grant of Dhruvasena I of Valabhi in Gupta-Valabhi year 206 (E. 1. vol. XI p. 106, where the king is said to have acquired the kingdom with the help of *maula*, *harta*, *mitra* and *śreni* armies). *Mānasollāsa* defines the *āstavika*<sup>264</sup> army as consisting of *niṣādas*, *mlecchas* and similar castes dwelling in the vicinity of mountains and *amitra* troops as soldiers who once belonged to an enemy king but being defeated were taken captive and made slaves. According to the *Rājatarāṅgī* (p. 38) '*aribala*' means 'troops that came to a king after leaving the king's enemy'. *Kām.* XVIII. 7 says that the *āstavika* troops are, by nature, irreligious, greedy, *auśīyas* and non-observers of truth. They correspond to the *pantharis* and freebooters of later times. The reasons why hereditary and other troops are superior to *amitra* and *āstavika* varieties are explained at great length by *Kaut.* IX. 2 and *Kām.* XVIII. 5-9. *Kaut.* (IX. 2) states that an *amitra* army led by an *arya* is superior to wild tribe troops. Both of them are out for plunder and in case no plunder can be had or when there is a disaster they may prove as dangerous as snakes. By *śreni-bala* he has in mind the organized bands of soldiers to whom he refers elsewhere as '*vārtāśāstropajīvinah*' (vide p. 89 above). As it is not unlikely that members of trade-guilds either themselves learnt the profession of arms or engaged soldiers for the protection of their merchandise and property, these could be pressed into his service by a king in case of need and were distinguished from the hereditary army and hired troops as '*śreni-bala*'. Differing from the *auśīyas* that troops composed of *brāhmanas*, *ksatriyas*, *vaiśyas* and *śūdras* are superior for enlistment in the order of the castes, *Kaut.* holds that an army of *ksatriyas* well-trained in the wielding of arms or an army of

263. आश्वदीय बलं राजा मौले मित्रबलं तथा । अर्योबलं भूतं चैव तथा श्रेणीबलं  
यमो ॥ तत्र मित्रबलं राजस्य मौले चैव विहितवत् । श्रेणीबलं भूतं चैव तुल्ये एवेति मे मतिः ॥  
माधवशास्त्रिक 7. 7-8.

264. सर्वतोपागच्छसंपात्तिनिषाद्वन्द्वेष्टजातिकम् । अधमं तत्समाख्यानं बलमाहविजं  
दुर्जे ॥ शासनात्तु समाकान्ता दासमापद्युपस्थिताः । तेषां बले तु विज्ञेयमनिमित्रबलं दुर्जे ॥  
मानसोल्लास II. 6. verses 539-560 p. 79.



vaiśyas and sūdras having greater numerical strength is better than an army composed of brāhmana soldiers, since an enemy may win over the latter army by prostrating himself before them.<sup>245</sup> Vide H. Dh. vol. II. pp. 122-123 for discussion on the question whether brāhmanas could become soldiers. In Udyogaparva 96. 7 (cr. ed. chap. 94) it is said that king Dumbhodbhava every day asked in the morning whether there was any sūdra, vaiśya, ksatriya or brāhmana equal or superior to him in armed conflict. That shows that soldiers of castes other than ksatriyas were not unheard of in the Epic age. Kām. IV. (63, 65, 67) says that the hereditary army (pitr-paitāmaha) should consist mostly of ksatriyas. In the Maliya copperplate of Mahārāja Dharaśena II (252 Valabhi samvat i. e. 571-73 A. D.) Bhatārka, the founder of the Valabhi dynasty, is said to have secured the kingdom with the help of maula, dhṛta, mitra and śrenī troops (Gupta Inscriptions p. 165). Śukra (II. 137-139) says that the soldiers may be sūdras, ksatriyas, vaiśyas, mlecchas or of mixed castes, provided they are brave, restrained, well-built, devoted to their master and their dharma, and hate the enemy. Śānti (101. 3-5) describes in what respects soldiers from Gāndhāra, Sindhu and other countries and Yavana and Deccan soldiers excel, remarks that brave and strong men are to be found everywhere (verse 6) and that men from the border (i. e. *bhīllas* and *kavartas* according to Nilakantha) are desperate fighters, would never run away from battle and so should be preferred for enlistment in the army (verse 19). The Yaśastilaka III (pp. 461-467) describes the characteristics of Northern Indian (auttarāpatha), Deccan (daksīṇātya), Dramila (South Indian), Tihut (Tairabhukta) and Gurjara soldiers. An army was said to be composed of four parts, viz. elephants, horses, chariots and foot-soldiers (caturāṅga bala). Kām. XVIII. 24 says that *bala* is sixfold, viz. the four sections of infantry, cavalry, chariots and elephants together with *maṁdā* (line of policy) and *kośa* (treasury). In Śānti. 103. 38 the army is said to have six āṅgas (the well-known four plus *kośa* and roads for traffic). According to Kautilya (II. 2, VII. 11) and Kām. XIX. 62 the destruction of

245. आङ्गणवृद्धिर्वैश्वदेवसूत्रेणानां तेजःसाधनान् पूर्व पूर्व भेषः संनद्धचित्तुर्निवा-  
चार्याः । नेति कौटिल्यः । मण्डितेन आङ्गवत् परोमिवायेन । महारणविद्याविनीतं तु क्षत्रिय-  
वत् भेषो बहुलसार्धं वैश्वसूत्रकानिति । कौटिल्य IX. 2.

the enemy's forces and victory depended on elephants.<sup>364</sup> Śānti-parva (100. 24) says that an army in which the infantry predominates remains firm and that cavalry and chariots are all right when there is no rain. Śānti (59. 41-42) enumerates eight elements of the army viz. the well-known four (elephants etc.), vīsti (labourers or porters who gave free labour and were only fed but were paid no wages), boats, spies, and guides (deśika).<sup>365</sup> Vide Śānti 121. 44 also. In the Mahābhārata elephants do not, except in rare cases, play any role in the fighting that went on, while chariots and the other arms of an army are described everywhere. In the Virāṭaparva (65. 6) Vikarna was seated on an elephant when he attacked Arjuna; Bhīmaparva 20. 7 refers to Duryodhana as riding an elephant and (95. 32-33) Bhagadatta is described as seated on an elephant when he attacked Bhīma. In this respect the Epic carries on the vedic tradition. Megasthenes (Fragment 1 p. 30) notes that in ancient India elephants were trained for war and turned the scale of victory. Vast armies were kept by ancient kings and emperors. When Śatrughna started against the demon Lavana he had an army of 4000 horses, 2000 chariots and 100 elephants with him (Rāmāyana VII. 64. 2-4). In the Daśakumāracarita VIII the cynical jester Vihārābhadrā reminds his master that the latter had 10000 elephants, three lakhs of horses and numberless foot-soldiers (B. S. S. p. 133, of ed. of 1919).

366. इस्तिपानो विजयो राजान् । कौटिल्य II. 2; इस्तिपानो हि परानीकवधः । कौटिल्य VII. 11; नान्येषु हि शिवितुज्जो विजयोः निषङ्गस्तस्मादुत्तमधिकमहो वृषतिः सदा स्यात् । कामन्दक XIX. 62; मुख्यं इन्विषत् राज्ञो समरे विजयैरिष्यात् । उरमाश्लिज्यते कार्यो बहुषो हिरया सुरैः । नामनीहारा II. 6. verse 678 p. 99; वतो नामास्त्रो वधः । इषभू. p. 42; बलेषु इस्तिनः पथावमर्गं रैरवधैरुत्तुधा इस्तिनो भवन्ति । नीलिवा- (चलस-सूदेश) p. 307. The four feet, the two tusks, the trunk and the tail are the eight weapons of an elephant. Though the Budhabhūṣana (p. 42) contains a glowing eulogy of elephants, the नीलिवाश्वासुत holds that elephants, if not properly trained, cause loss of wealth (because they eat vast quantities of fodder and grains) and of lives (they trample down their own soldiers through fright) 'अशिक्षिता इस्तिनः केवलमर्थयाचकान्' 22. 5 p. 208. The पञ्चसिद्ध III. p. 491 notes 'न विनीता मया देवां तेषां ते सुव केवलम् । कुशाचार्ये विनाशाय रणे चामवधानम् च न. This has often been illustrated in battles against early Moslem and other invaders e. g. vide Elphinstone's History of India (3th ed. of 1866) p. 309 (the fate of Dahir king of Sindh against Mohammed bin Qasim, when the former's elephant was struck with a fireball) and p. 329 (Assanpal against Mahmud of Ghazni) and also Cambridge History of India, vol. III. (1928) pp. 5 and 16 for the same.

367. रथा नामा इषाश्चैव पादाश्चैव पाण्डव । विष्टिर्मांसश्चराश्चैव देशिका इति चाष्टमम् ॥ अङ्गुल्येताभिः कौरव्य पकाशानि बलवत् तु । शांति 59. 41-42.



Megasthenes (in Fragment XXVII p. 68) speaks of the camp of Sandrakottos (Candragupta Maurya) that had 400000 men, notes (in Fragment LVI) that the king of Palibothra had in his pay a standing army of six lakhs of foot-soldiers, 30000 cavalry and 9000 elephants (p. 141, McCrindle), that the king of Horatae (Surāstra) had 150000 foot-soldiers, 5000 cavalry and 1600 elephants (*ibid* p. 150) and that even the Pāṇḍyan kingdom ruled by women had 150000 foot and 500 elephants (*ibid*, p. 147). Vide Beal's 'Buddhist Records &c.' vol. I, p. 213 for the armies collected by Hargā in his march against the murderer of his elder brother (viz. 5000 elephants, 2000 horse and 50000 foot-soldiers) and the vast armies that he had after six years of conquest viz. 60000 elephants and 100000 cavalry. In the *Asvamedhikaparva* (60. 14-20) it is narrated that when Drona assumed the post of commander-in-chief the Kaurava army had been reduced to 9 *akṣauhīnīs* from eleven, that only five were left when Karna became *Senāpati* and the Pāṇḍavas had then only three left and under Śalya's command there were only three *akṣauhīnīs* and the Pāṇḍavas could oppose to him only one. In reply to a question from Dhṛtarāṣṭra Yudhiṣṭhira states that in the great war the total number of warriors killed in battle came to the colossal figure of 1660020006 (*Śtriparva* 26. 9).<sup>262</sup> The *Udyogaparva* gives (155. 24-26) the following table for an *akṣauhīnī*: 500 elephants, 500 chariots, 1500 cavalry and 2500 foot-soldiers constituted an army called *senā*, 10 *senās* = *prānā*, 10 *prānās* = *vāhinī*, 10 *vāhinīs* = *dhruvinī*, 10 *dhruvinīs* = *amū* and 10 *amū*s = *akṣauhīnī*. The Kauravas had eleven *akṣauhīnīs* and the Pāṇḍavas had 7. If we take the table in *Ādi* 2. 19-22 one *akṣauhīnī* contained 21870 elephants, the same number of chariots, 65610 horses and 109350 foot-soldiers.<sup>263</sup> But if the other tables be followed then the numbers may be much larger still. Another table furnished by *Udyogaparva* 155. 28-29 is: 55 men constituted *patti*, 3 *pattis* = *senāmukha* or *gurma*, 3 *gurmas* = *gapa* and there were *ayutas* (10 thousands) of *gapas* in the army of the Kauravas. The *Ādiparva* (2. 19-22)

262. दशायुतानामयुतं सप्तशतानि च विप्रतिः । कोट्यः दक्षिणं पद् चैव तस्मिन्प्राञ्च-  
सुधे हताः ॥ अर्पितं 26. 9.

263. एको रथो गजश्चैको नराः पञ्च पदास्यः । त्रयस्य दुरासस्यैः पत्तिरिषभिधी-  
यते ॥ पत्तिं तु विंशतिनामाहुः सेनामुखं दुराः । त्रीणि सेनामुखान्येको गुर्मा दुराभिधी-  
यते ॥ त्रयो गुर्मा गपः नाम वाहिनी तु यणःस्यः । दशस्यस्यस्यैव वाहिण्यः दशनेति  
विश्वस्यैः ॥ अयमुत्तमदितिसत्तिसंध्यस्तनीकिनी । अनीकिनी दशहृषो नाहुरकीकिनी  
दुराः ॥ आदि 2. 19-22.

differs from both tables in some respects. The Udyogaparva 155. 22 further notes that each horseman was surrounded by ten men as attendants (*marā dāsa hayasācāsan pādaraksāḥ samantataḥ*). Though throughout the centuries the infantry was theoretically and in practice more numerous than cavalry, not much importance seems to have been attached to them as compared with chariots or horsemen. The lexicon called *Vaijayanti* says that *patti* consists of three horses, five foot-soldiers, one chariot and one elephant, that three *pattis* are equal to *senāmukha* and that *senāmukha*, *gūḥma*, *gāṇa*, *vāhini*, *pṛtaṇā*, *camū*, *anikini* represent each three times as many as the preceding one and that 10 *anikinis* are equal to an *akṣauhīni*. The *Nītiprakāśika*<sup>270</sup> gives a table of groups from *patti* to *akṣauhīni* and remarks that each of these groups had in turn numerous supporting men e. g. each elephant was followed by a hundred horsemen and a thousand foot-soldiers and each horseman was supported by a thousand foot-soldiers (VII. 3-10). *Manu* VII. 192 refers to battles on water also. From references in the *Mahābhārata* it appears that chariots had only two wheels. Vide *Bhīṣma* 98. 47, *Droṇaparva* 154. 3, *Śalya* 16. 24 (*Saineyo dakṣiṇam cakram Dhr̥ṣṭadyumnas-tathottaram*). Two noted warriors were told off to guard the two wheels of the chariot of the principal commanders and are called 'cakra-rakṣaṇ' (vide *Bhīṣma* 54. 76, 108. 5, *Droṇa* 91. 36, *Karna* 11. 31, 34. 44). Chariots of great warriors were drawn by four horses e. g. *Adi* 198. 15, *Udyoga* 48. 50, *Droṇa* 145. 81. *Udyoga* 83. 15-21 describe the chariot of *Kṛṣṇa* and *Udyoga* 140. 21 states that chariots had small tinkling bells attached to them and also screens of tiger-skin. The *Rg.* contains very graphic descriptions of chariots. Chariots were generally drawn by two horses in the vedic age (*Rg.* V. 30. 1, V. 36. 5, VI. 23. 1) and had two wheels, but the chariot of the *Aśvins* is described as having three wheels (*Rg.* I. 118. 2, I. 157. 3, X. 41. 1). *Ghaṭotkaca*, however, had eight wheels to his chariot (*Droṇa* 156. 61, 175. 13). The *Sukranītisāra* (II. 140-148) mentions another method of grouping the army. Five or six foot-soldiers made a *patti* over which there

270. पत्तिः सेनामुखं दृष्ट्वं पथो वै वाहिनी ततः । दृष्ट्वा चन्वनीकिन्वो तदध्याधौ-  
हिणी स्मृता ॥ ... पञ्चमेहिण्योः तयोः कमादाहका पथोत्तरम् । अनीकिनीं दशमुजानाह-  
रक्षीहिणीं द्रुपः ॥ नीतिप्रकाशिका VII. 1 and 10. ; compare सिंहर्ष पञ्चपादाहर्ष पदेकर-  
पकुलम् । सेन्यं सा पञ्चोत्तराहर्षेहृण्पाकपुर्धकात्मम् । सेनामुखं दृष्ट्वन्मणौ वाहिनी  
पुनरा चम् । अनीकिनीपनीकिन्वः पुनरक्षौहिणी दश ॥ verses 57-58 of the अविद्यावाय  
in the सुनिकाण्ड of वैजयन्ती.



was an officer called *pattipā*, over 30 *pattipālas* there was the *gaṇmika*, over 100 *gaṇmikas* was the officer called *śatānuka* who had as his assistants an officer called *anuśatika*, a *senāni* and a *lekha* (scribe); the officer over twenty elephants or horses was called *nāpaka* (compare modern "naik"). Each of these officers should have a distinctive badge indicative of their position. *Ayodhya* 100. 32 (= *Sabbā* 5. 48) asks: 'I hope you give at the proper time pay and rations to your soldiers according to their deserts and do not delay payment'. Both *Nār.* (*sambhūya*-22) and *Br.* state that among persons who work for hire the best is the soldier. The *Mānasollāsa* (II. 6. 566-569 p. 80) describes that the chiefs of the hereditary army should always be honoured by the king with presents of jewels, ornaments, costly clothes and sweet words and sumptuous provision for their maintenance should be made by bestowing on them a village, or two or more villages and heaps of gold, while hired soldiers should be paid every day or every month or once in three, four or six months or once in a year according to the needs of the king. *Megasthenes* (*Fragment* XXXIV p. 88) describes the organization of the Indian army: 'A third governing body directs military affairs, of which there were six divisions with five members to each. One co-operates with the admiral of the fleet, another with the superintendent of bullock trains, the third division has charge of foot-soldiers, the fourth of horses, the fifth of war chariots and the sixth of elephants.' In medieval times chariots appear to have become obsolete. In the graphic descriptions of armies contained in the *Harsacarita* (particularly in the 7th *ucchvāsa*) war chariots are conspicuous by their absence. The *Mahābhārata* often speaks of horses from the countries to the north-west of India as the best; vide *Sabbā* 53. 5 (for *Kāmbōja* and *Gāndhāra* horses), *Udyoga* 86. 6 (horses from *Bālhi*), *Drupa* 125. 25 and *Sauptika* 13. 2 (*Kāmbōja* horses). The *Harsacarita* II speaks of the best horses as coming from *Vanāyū*, *Aratta*, *Kāmbōja*, *Sindhudēsa* and *Pārasika*. *Śukra* lays down certain practical rules about the army (IV. 7. 379-390). He says that the soldiers should be encamped outside the town or village but not far from it, that no money-lending should be allowed between the soldiers and the village people, that the king should open separate shops for goods required by soldiers, that no army should be encamped at one place for more than a year, that soldiers should not enter the village without the king's permission, that receipts should be taken from soldiers

for payments made to them and they should be furnished with a writing about their pay. Some of these rules are very old. The *Udyogaparva*<sup>271</sup> 37. 30 mentions among persons with whom no contractual transactions should be entered into, the king, the king's servants and soldiers.

The *Arthasāstra* contains an elaborate discussion (in IX. 1-7 and X. 1-6) about the organization of the king's army, the proper time and place for starting on an invasion, internal and external troubles and calamities and measures against them, means of dealing with traitors and enemies, religious remedies (worshipping gods and falling at the feet of brāhmanas, magical rites based upon the *Atharvaveda*) against misfortunes like fire and flood, epidemics, famine &c., encampment (*skandhāvāra*) of armies, treacherous and strategic fighting, proper battle grounds, encouragement to one's own army, free labourers and their work, different arrangements or formations (*vyūhas*) of armies. Considerations of space prevent any treatment of these matters. But a few notable points will be set out here. A king may invade his enemy's country either in *Mārgaśīrṣa* (when the crops sown in the rains are ready) or in *Caitra* or when the enemy is suffering from some calamity. *Sānti* (100. 10-11) says the same thing. Internal trouble arises when any minister, *purchita*, *senāpati* or the crown prince is angry or dissatisfied with the king, who should get rid of such trouble by giving up his own fault or by pointing out the danger arising from an enemy. If the crown prince causes trouble he should be kept in confinement or killed, if there is another son of good character. The trouble caused by a provincial Governor or the officer in charge of boundaries (*antapāla*), the chief of wild tribes or a conquered king is termed external. The king should meet it by setting up one against the other. The encampment of an army is to be made on a site declared to be the best according to the science of buildings and measured by the *nāyaka* (the chief of the army), carpenter and astrologer, the encampment being circular, square or rectangular and having four gates, six roads and nine divisions. Disputes, drinking, holding merry gatherings (*saṁāja*) and gambling should be prohibited in the camp and the system of passes should be enforced (X. 1). *Vanaparva* (15. 14, 19) also refers to the system of passes and the fact that

271. ययौ राजा दुष्कली राजधनं दुर्वो ज्ञाता विधवा बालयुवा । सेनाजीवी चोरपु-  
त्रपुत्रिणं स्वप्राह्मणं वर्जनीयः स्तुते ॥ *उद्योग* 37. 30 (cr. ed. 37. 28).



dancers and musicians were driven away, when Dvārakā was besieged by Śālva. From Udyoga 151. 58 (cr. ed. 149. 53), 195. 12-19 (cr. ed. 196. 12-19) it appears that markets, prostitutes, conveyances, oxen, machines, arms and physicians accompanied an army and that the camp (*senāniveśa* or *skandhāvāra*) of Duryodhana looked like the capital itself and was five *yojanas* in extent. Physicians with surgical instruments, blunt instruments (like tweezers), medicines, curative oils and bandages in their hands and women (nurses) looking after the food and drink of the army should stand behind the soldiers uttering encouraging words<sup>272</sup> (Kaut. X. 3). The Bhīṣmaparva 120. 55 also states that doctors well-versed in extracting splinters or arrow-heads (from the body) approached with their surgical instruments to extract the darts from Bhīṣma's body. The duties of the labourers (*śūti*) were to examine the camp, roads, bridges, wells, and river *ghats*, to carry machines, weapons, armour, utensils, fodder, to remove from the battle-field wounded men along with their weapons and armour.<sup>273</sup> Each commander had some distinguishing device as his banner e. g. Bhīṣma had a golden tāla tree as his standard (Bhīṣmaparva VI. 17. 18, tālena mahatā Bhīṣmah pañcatārepa ketuna). In X. 6 Kautīlyā speaks of several formations (*vyūhas*) called *daṇḍa*, *bhoga*, *maṇḍala*, *asaṇihata* and the subdivisions such as *gomūtrikā*, *makara* &c. In Kam. XVIII. 48-49, XIX. 40 ff., Manu VII. 187-191, Nītiprakāśikā, chap. 6 and in the Mahābhārata many *vyūhas* are described. Vamaparva (285. 6-7) refers to Rāvapa's arrangement of his army according to the rules of Uśanas and of Rāma's army according to Bārhaspatya rules. The Āsrama-vāsikaparva 7. 15 refers to the formations called Śakata, Padma and Vajra described in the work of Uśanas. Kautīlyā X. 6 also refers to Ausanasa and Bārhaspatya arrangements of armies. Drona 75. 27, 87. 22-24, Karpaparva 11. 14 and 28 mention certain *vyūhas* like *Makara*, *Śakata* &c. Vide also Mānasollāsa II. 20 verses 1170-1181 pp. 134-135, Agnipurāṇa 242. 7-8 and 42-73 for *vyūhas*. Though Kautīlyā recommends all sorts of tricks and treachery for securing a victory, the

272. चिकित्सकाः शस्त्रपन्त्रागदस्त्रमेवमहस्ताः । क्षिपत्राक्षगामशिल्पाः द्रुपदाणाहज-  
र्षनीयाः दृढतन्त्रिणश्च । कौटिल्य X. 3 ; उपनिषद्ग्रन्थे वेदाः शस्त्रोद्धारणकोविदाः । भीष्म  
120. 55.

273. शिबिरमार्गसिंहकूपतीर्थशोधनकर्मपन्त्रावुपाकरणैश्च कर्णदासवहनमाद्योद्यमान्  
प्रहरणापर्ययतिचिद्वापनपनमिति विद्विकर्तवि । कौ. X. 4.

*Mahābhārata* holds up a high ideal. The *Bhīṣmaparva*<sup>274</sup> 21. 10 remarks that conquerors do not secure victory so much by their armies and prowess as by truthfulness, freedom from cruelty, the observance of dharma and energetic actions. The *Śānti-parva* (95. 17-18) states that it is better to die while fighting according to the rules of dharma rather than obtain a victory by wicked actions.

In the *Bhīṣmaparva* (I. 27-32) certain rules of war agreed upon between the Kauravas and the Pāṇavas are set out, such as one should fight only with one similarly equipped (i.e. a foot-soldier with a foot-soldier and so on), one should not kill a soldier who is already in combat with another, or who has turned back from fight or is without armour. *Ap. Dh. S. II. 5. 10. 12*, *Gaut.* X. 17-18, *Yāj. I. 326*, *Manu VII. 90-93*, *Śānti 95. 7-14, 96.3*, *Śānti 98. 48-49, 297. 4*, *Dronaparva 143. 8*, *Karpa 90. 111-113*, *Saṃpāṇika 5. 11-12, 6. 21-23*, *Saṅkha* (quoted by the *Mit.* on *Yāj. I. 326*), *Baud. Dh. S. I. 10. 10-12*, *Vṛddha-Hārta VII. 226*, *Bṛhat-Parāśara X. p. 281*, *Śukra IV. 7. 354-362*, *Yuddha-kāṇḍa 18. 27-28* contain rules of war dictated by noble sentiments of humanity and chivalry. Some of these (that will bear comparison with the conventions of the Geneva and Hague Conferences) are set out here. *Gaut. (X. 17-18)*<sup>275</sup> states: 'no sin is committed by injuring or slaying men in battle excepting him who has lost his horse, charioteer or weapons, him who joins his hands (in supplication for life), whose hair are dishevelled (in flying), who turns away from the field, who sits down, who climbs an eminence or a tree (in flight), except envoys or messengers, except him who declares himself to be a cow or a brāhmaṇa'. *Vṛddha-Hārta VII. 216* exempts spectators. *Manu (VII. 90-93)* declares "one should not fight with treacherous

274. न ह्यथा बलवीर्याभ्यां जयन्ति विजिगीषवः । यथा क्षत्रपादुश्वस्यमां धर्मैवेवोद्यमेन च ॥ भीष्म 21. 10 । धर्मैव विजयं श्रेयो न जयः पापकर्मणा । नाधर्मैश्चरितो राज्यं सद्यः कलमि पौरिव । मूर्खानि च वशासाच दृष्टुं समधिगच्छति ॥ शान्ति 95. 17-18.

275. न द्वेयो विसाधानादये । अथवा श्वस्यमाद्युधकृताञ्जलिप्रीतिक्रियराक्षुक्षो-यविहरेष्वलवृक्षापिहृदहृतयोऽन्नाद्यजननादिभ्यः । सौतम X. 17-18; न पानीयं विवर्णं न सुखाद्यं भोग्यामहो सुजनं नावर्ण्यं स्वधर्मं न क्षिपे न करोत्येव न बाजिनं न सारथिनं न सूतं न दूतं न वाह्यं न राजाधानराजा हन्ताम् । शङ्ख ५. 111 विताहता ०० या. 1. 326; यद्वाञ्जलि-पूरे द्वौज वाचनं क्षरणागतम् । न हन्ताद्यादुश्वस्यार्थमपि शत्रुं परस्ताप ॥ अज्ञो वा यदि वा हत-परेषां शरणं यतः । अतिः पाणाद् परिपश्य रक्षितव्यः कुतश्चामा ॥...एवं द्वेयो महानयं नृप-नामरक्षणे । अस्वार्थं चापशस्त्रं च बलवीर्याधिमात्मनम् ॥ रामायण VI. 15. 27-28, 31; न यथा दूत्येन लोकं सुखानामिह धर्मतः । सौमिकपर्व 3. 11; वृक्षमातो न हन्ताम्यो न च स्त्री नैव वृष्टतः । वृक्षधूमं सुखं चैव तवास्तीति च यो वदेत् ॥ शान्ति 98. 48-49.



( or concealed ) weapons, or with barbed or poisoned weapons or with weapons the points of which are blazing with fire. Let a fighter not strike one who has climbed on an eminence, nor a eunuch, nor one who joins the palms of his hand ( in supplication ), nor one with flying hair ( in flight ), nor one who sits down or says ' I am thine ', nor one who is asleep, nor one who has lost armour, nor one who is naked or disarmed, nor one who is merely looking on without taking part in the fight, nor one who is fighting with another foe, nor one whose weapons are broken, nor one who is afflicted with sorrow, nor one seriously wounded, nor one who is in fear, nor one who has turned to flee.' Śaṅkha adds that a soldier should not kill another while the latter is drinking water or taking his meals or is taking off his shoes, nor should one kill a woman, a female elephant, nor a charioteer, nor a bard nor a brahmana nor should one who is not a king ( or noble ) kill one who is a king. Baud. Dh. S. I. 10. 10 forbids the use of poisoned or barbed arrows ( *kariṇi* ). Śānti 95. 11 also does the same. Śānti ( 95. 13-14 ) enjoins that even an enemy soldier, when wounded, should be treated with medicine and allowed to go when his wounds are healed.<sup>276</sup> Śānti adds that a soldier should not kill boys or old men nor from behind nor one who holds a blade of grass in his mouth ( as a mark of submission ). These rules, though probably ideal and not strictly followed in every case, are far more humane as compared with the practice in modern warfare when non-combatants are killed from the air even at night without warning. In ancient times non-combatants went generally unmolested, to which Megasthenes bears testimony when he says ( Frag. I. p. 32 ) ' Tillers of the soil even when battle is raging in the neighbourhood are undisturbed by any sense of danger, for the combatants allow those engaged in husbandry to remain quite unmolested.' Manu VII. 32 allows a king to harass his enemy's country, but Medhatithi on VII. 32 asks the invader to save his enemy's people if possible ( particularly *brāhmaṇas* ). The rule in *padāyuddha* ( fight with maces or clubs ) was that no blow was to be struck below the navel ( *Sālyaparva* 60. 6 ). But this rule was violated by Bhīma when he struck Duryodhana on the thigh with his mace. Duryodhana recounts ( in *Sālya* 61 ) all the bad deeds of Kṛṣṇa and the Pāṇḍavas and the only reply that Kṛṣṇa makes is that he too was guilty of

276 भद्रकाली विपक्षश्च कुलदणो हतवाहनः । चिदितम्भः स्थातुं कश्चिदपि प्राप्तां वा स्वयुद्धे भवतु ॥ निर्वर्णश्च स मोक्षश्च ह्येष धर्मः समाप्तः । शांति 95 13-14.

numerous breaches of morality and the chivalrous rules of war (such as the slaying of Abhimanyu by many engaging him at one time). The general rule was that fighting ceased when the sun went down (Bhīṣma 49. 52-53). But in Dronaparva 54 and 163, 16 ff we have a description of night battles and it is provided that chariots, elephants and horses should carry lamps.

It has already been shown how it was the duty of a *kṣatriya* and of every soldier to fight and die in battle rather than run away. A fighting spirit was inculcated by holding out several rewards. One was the acquisition of booty and territory (Gaut. X. 41, Manu VII. 206, Bhagavadgītā II. 37); others were the satisfaction of having done one's duty as a *kṣatriya* (Gītā II. 31-33), honour and fame (Gītā II. 34-35), heaven and other-worldly rewards (Yāj. I. 324, Manu VII. 88-89), protection of *brāhmanas* (Āp. Dh. S. II. 10. 26. 2-3). Viṣṇu Dh. S. III. 44-46 have already been quoted above (p. 58). The Śānti (98. 40-41) states that a soldier who runs away from the field falls into Hell. Yāj. (I. 324-325) declares that those who, while fighting with weapons that are not treacherous (poisoned &c.) for the sake of the land (of their master or of the enemy) die in battle without turning back from it go to heaven like *yogins*, that each step of those who do not flee even when their comrades have been killed is equal to a solemn sacrifice (like the *Aśvamedha*); the king (the master) takes away all the merit of those who run away from the battlefield and are then killed. Manu VII. 95 contains the same idea. These remarks were applicable not only to *kṣatriya* soldiers, but to soldiers of all castes who maintained themselves by following the profession of arms. Vide *Rajanitiprakāśa* p. 407. *Parāśara* (III. 31) and *Bṛhat-Parāśara* X. p. 281 remark that a valiant soldier who does not seek mercy though surrounded by many enemies and falls fighting attains imperishable worlds and that when he reaches heaven divine damsels run after him to choose him as their Lord (III. 34-35). *Parāśara* III. 36 is a <sup>277</sup> verse which is

277. सं वज्रसंघातपता च विना स्वर्गैर्दिनां यथैव वाप्ति । सर्वेन वायवेन हि तत्र  
 वीराः पाण्डव सुपुत्रेषु रसिपुङ्गवः ॥ पराशर III. 36; कौटिल्य X. 3 presents some  
 different readings. The second verse in कौटिल्य is न तं शरां वसतिराप दूरीं सुसज्जते  
 वर्षाकृतोत्तरोधम् । तदप्यत्र वा दूराकं च यच्छेद्यो भर्तृमित्रस्य कृते न दुर्यते ॥ It occurs  
 also in the वलिज्ञापोदम्भराय (IV. 2) attributed to शार, where also it appears  
 to be a quotation being introduced with the words शुभान्मु भवन्तः । पराशरसुखी-  
 कृते सेनये चो दूराकं विवर्त्ते । अप्युदासी हेतुवदामि शूरधर्मकचोत्तमः ॥ शिरोऽवतरय ये वज्र-  
 विज्ञानि च विन्दुवः । सत्यपानेन मे तुलया इति वलिज्ञोऽवधीत ॥ उपपन्ते सुपुत्रो ये च  
 सुपथधर्मकचोत्तमः । इहैतैर्बहुभिर्वातिरेव वाप्ति विचिदपम् । सुवत्पराशर X. p. 281. वसि-  
 ष्ठ means पराशर.



one of the two quoted by Kaut. (X. 3) when soldiers are to be urged on to fight. Kautīlya (in X. 3) advises that the king himself and his *mantrin* and *purohita* should urge on his soldiers by quoting Vedic and classical Sanskrit passages about the rewards waiting for those who fall fighting for their master and the religious punishments for those who run away. Astrologers should infuse spirit into their side by asserting that the heavenly aspects favour their side. The day before the battle the king should observe a fast, offer oblations into fire to the accompaniment of Atharvaveda *mantras* and cause benedictory texts to be repeated that refer to victory. Bards should recite lays describing heaven as the reward for the brave and hell for the timid and extol the caste, guild, family, deeds and character of the soldiers. The assistants of the *purohita* should declare that they have practised witchcraft against the enemy. The commander-in-chief and the officers under him should address the army as follows:—'a hundred thousand (*panas*) will be the reward for him who kills the enemy king, fifty thousand for him who kills the commander-in-chief or the crown prince, ..... a hundred for slaying the officer of the *patti* (a battallon), twenty for bringing the head (of a common soldier) and twice the pay and the booty seized by each to all soldiers'. Kām. (XIX. 18-21) says that the king should give the rewards (promised as in Kaut.) to the soldiers after they succeed in the exploits mentioned. Vide also Mānasollāsa II. 20 verses 1163-1167 (pp. 133-134) for similar promises. Gaut. (X. 20-23) prescribes that whatever wealth is acquired by a soldier by his individual effort should be given to him by the king, but the horse or elephant caught by a soldier goes to the king, that if many soldiers by a joint effort obtain some valuable plunder the king should choose and retain the best for himself and the rest should be divided among the soldiers according to their services in the battle. Vide Manu VII. 96-97 (which allow even a chariot, horse or elephant to be retained as booty by the soldier and everything else including female slaves, except jewels, gold and silver), Kām. XIX. <sup>278</sup> 21-22, Śukra IV. 7. 372.

A treatise will be required to deal with the weapons of war from ancient times. Even in the Rgveda several weapons are mentioned e. g. *ṛṣi* (Rg. V. 52. 6, V. 57. 2 and 6 on the shoulders

278. कर्णं ह्येव च कुक्षं च यो यज्जघनि तस्य तत् । दद्याद् वस्त्रमुत्तमं हि द्रुयो  
वीर्यवतामिदं ॥ काम. XIX. 21-22 and शुक्र IV. 7. 372 (read: दद्यात्कर्णादुत्तमं च  
... मर्त्यवत्).

of the Maruts), arrows (V. 57. 2, VI. 75. 17), quivers (V. 57. 2), the *ankuśa* (of Indra in VIII. 17. 10, X. 44. 9), *paraśu* (X. 28. 8), *krpāna* (probably a dagger, in X. 22. 10), *vajra* made of *ayas* (X. 48.3, X. 113.5). Atharvaveda IV. 6. 6. refers to poisoned arrows. In the Atharvaveda<sup>279</sup> I. 16. 2 and 4 reference is made to lead as destroying sorcerers and it is said 'if you kill our cow or horse or man we shall pierce you with lead so that you will cease to kill our strong men'. In Tai. S. I. 5. 7. 6 it is said<sup>280</sup> that when a *samīd* is offered into fire with the mantra 'indhānās-tvā śatām himāh' the sacrificer discharges against his enemy the *śataghanī* (weapon killing a hundred) which acts like *vajra* itself'. Dr. Oppert in his Introduction to the *Nūlpraksikā* pp. 10-13 relies on these and other passages for holding that the ancient Indians knew fire-arms and that Atharvaveda I. 16.4 refers to *laden balls* discharged from cylinders. Vide Dr. Oppert's work on the 'weapons, army organisation and political maxims of the ancient Hindus' (1890), where he describes several weapons and holds that gunpowder was known in India long before the 13th century A. D. Mr. G. T. Date's 'Art of war in Ancient India' (London 1929), Dr. P. C. Chakravarti's work (1941, Dacca) and Prof. Dikshitar's book on the same subject may be consulted for details. The numerous weapons mentioned in the *Mahābhārata* (e. g. Udyoga 155. 3-9) also are passed over here. Vide Hopkins' paper in J. A. O. S. Vol. XIII pp. 269-303 for detailed descriptions. The Allahabad Stone Pillar Inscription of Samudragupta (middle of 4th century A. D.) contains a long list of weapons (C I I III pp. 6-7).<sup>280a</sup> One important question is whether gunpowder and fire-arms were known to our ancient and medieval works. Śakra refers to gunpowder called *agnicūrma* in II. 93.196, IV. 7. 203, *gups* (IV. 7. 209-211) and gives the formula of gunpowder in IV. 7. 201 (viz the mixing of five *pālas* of salt-petre, one *pala* of sulphur and one *pala* of coal powder). The *Sūkrantīkāra* is comparatively a late work and was probably

279. सीमावाधया वक्रजः सीमावाधिव्यावृत्तिः सीमं न हन्तिः प्राप्यन्तु न हन्तुं वातुषा-  
हन्तुः ॥ यदि नो मां हन्ति यत्तत्त्वं यदि दूकयन् । तं त्वा सीमेन विधायो वध्या वाहो अगिरहा ॥  
अथर्ववेद I. 16. 2 and 4.

280. एषा वै सुर्मा कर्णकाव्येतया ह स्म वै देवा अहुराजी जगदहो<sup>१</sup> कृत्स्नानि यदेतया  
सन्निधनाद्व्याप्तिं यन्मेवेतच्छब्दार्थी यजमानो ब्रह्म्याय श्रद्धातिः तै. सं. I. 5. 7. ५ सायण  
explains 'अवतन्ती शोभमयी स्थूणा सुर्मा । सा च कर्णकावली शिववती । अन्तरपि स्वतः-  
स्तीत्यर्थः । तज्जमानेपमृक् । ... अतया सन्निधाय येन जगद्वीमेनायुत्वं तज्जं कृतम्'.

280a. 'परशु-शर-शङ्ख-शक्ति-पात-अ-ति-होम-भिन्दिपाल-वाराच-वेतसिकायनेक-  
वधरथ-विस्फाटुलज्जय-हवाहूमान-सहस्र-पोषणितकायतरवर्मकः' Gupta Inscriptions  
pp. 6-7.



written in the 13th or 14th century when cannon came to be used in Europe for the first time. Both in the Rāmāyana and the Mahābhārata the word *śataghni* (killing a hundred people) occurs frequently. In the Yuddhakāṇḍa<sup>251</sup> 3. 13 it is stated that at the gates of Lāṅkā hundreds of iron śataghnis, looking burnished, sharp and terrible, had been arranged by the demons. In a poetic description of Lāṅkā in the Sundarakāṇḍa chap. 2, it is said that śataghnis and śūlas were like the hair on the head of Lāṅkā (verse 21). In the Vanaparva 15 there is a fine description of Dvāravati (Dvārka) besieged by Śālva, in which it is said that the capital had numerous towers and turrets, machines, tomaras, ankushas, śataghnis &c. In Ādi. 207. 34, Vanaparva 169. 16, 284. 5, 290. 34, Droṇa 156. 70, Karṇa 11. 8, Śalya 45. 110 the śataghni is mentioned, but it is impossible to find from these what exactly it was like. From Vanaparva 284. 31 it appears that the śataghnis were discharged with force by the hands and had wheels and round balls or stones in it. In Droṇa 179. 46 it is said that the śataghni employed by Ghaṭotkaca had wheels and killed four horses at once. In Droṇa 199. 19 śataghnis are said to have two or four wheels. In Vanaparva<sup>252</sup> 284. 4 it is said that the powder of *śarjaraśa* (resin from Śal tree) had been collected. In the Harivamśa (Bhaviṣya-parva 44. 20), among the weapons hurled at Narasiṃha by Hiraṇyakaśipu were blazing śataghnis (śataghniḥhiṣca dīptābhir-dandairapi sudāruṇaibḥ). In Rāmāyana VII. 12. 44 we are told that at the tip of the weapon called *musala* (club) blazed forth fire like a bunch of Aśoka flowers. The Sundarakāṇḍa couples together *śataghni* and *musala* (4. 18). It looks probable that resinous powder was used in some cylindrical contrivances (or rockets) mounted on wheels and capable of throwing stones. But gunpowder appears not to have been used. There is no description of smoke due to śataghnis. Hopkins (J. A. O. S. XIII pp 299-301) holds that gunpowder and fire-arms were unknown to the great Epic and in the present state of our knowledge this view seems to be correct.

The Nītiprakāśikā (chapters 2-5) names and describes numerous weapons divided into four classes viz. *mukta* (thrown

251. द्वारेषु संयुक्ता बीमाः कालापमघाः जिताः । शस्त्राणि रक्षिता वीरैः शतघ्नो रक्षतां गवैः ॥ युद्धकाण्ड 3. 13 । तद्वदालापनयनं विद्वलान्धुनामभिरामम् । शस्त्रैः सुयुक्तान्तामहातकर्मसकामम् ॥ सममेव कृतां लङ्कां निजितां विश्वकर्मेण । सुन्दरकाण्ड 2. 21-22.

252. कषाहवम्बुधुर्यो वसुधुः सहस्रोपलाः । साग्रीषिवपटा घोषाः मसर्जरवर्षाद्वजः ॥ सुमलाहातसारवर्षाभिरासिपरश्वरैः । अग्नितप्त शस्त्राणि समुच्छिद्यदधुनाः ॥ वनपर्व 284. 4-5.





## CHAPTER IX

### SUHRT OR MITRA (ALLY OR FRIEND).

Manu inculcates the necessity of making friends in VII. 208 and cites the qualities of a good friend (for a king) 'a king does not prosper by the acquisition of gold and land so much as by securing a firm friend who would be powerful in future, though he may be of depleted resources at the time. That friend, though a weak one, is commended, who is righteous, grateful, whose subjects (or ministers) are contented, who is attached and who pursues (to the end) work undertaken'. According to Manu VII. 206 land, gold and ally are the three fruits of royal endeavour or policy. Yaj. I. 352 is similar to Manu VII. 208. In VII. 9 Kautilya in opposition to the above holds that the acquisition of land is better than that of gold and friend and the acquisition of gold is superior to that of a friend<sup>284</sup>. The Mahābhārata (Śānti 138.110) states 'no one is the friend or enemy of any one else; friends or enemies are made by wealth (or objects pursued by a person)'.<sup>285</sup> Kām. VIII. 52 says the same. Śūkra. (IV. 1. 8-10) opines 'in the case of a brave, energetic, strong and politic king all others, though outwardly friendly, secretly cherish enmity to him and only wait for (the proper) time (to strike). There is no wonder in this. Are they not themselves greedy of conquering territories? A king has no friend and he is the friend of none'. Śānti (80. 3) says<sup>286</sup> that a friend is of four kinds, one who has the same goal, one who comes for protection or security, one who is naturally so and one who is acquired. Karpaparva 88. 28 gives the four kinds somewhat differently viz. natural (*sahaja*), acquired by conciliatory words,

284. संहितवर्षाणि मित्रहिरण्यभूमिदामानामुत्तरीश्वरो ह्यमः श्रेयान् । मित्रहिरण्ये हि भूमिदामाश्चर्यकः । मित्रहिरण्यदामाद्यो वा तानां मित्रः श्रेयसोत्पत्तये साधयति । कौटिल्य VII. 9.

285. न कश्चिःकस्यचित्मित्रं न कश्चाप्यन्यचित्सुद्वन्द्वः । अयं तस्य मित्रवदन्ते मित्राणि रिपवस्तथा ॥ शान्ति 138. 110; कारणेन हि जायन्ते मित्राणि रिपवस्तथा । कामन्दक VIII. 52; नास्ति जायता रिपुर्नाम मित्रं नाम न विद्यते । सामर्थ्ययोगाच्चायन्ते मित्राणि रिपवस्तथा ॥ विष्णुधर्मोत्तर II. 143. 14 = शान्ति 140. 5; न राज्ञो विद्यते मित्रं राज्ञा मित्रं न कर्यते । शूक्र IV. 1. 9.

286. महावीर्यमजमानस्य सहजा दुर्धमस्तथा । शान्ति 80. 3. अजमान may mean 'पितृवैराग्यमहाकामयतः' and सहजा friends are one's mother's sister's, son and the like.

won by wealth and one drawn by one's prowess. Kām. (IV. 74) says that a *mitra* is of four kinds viz. by birth (such as one's father's father, mother &c.), made by relationship (i. e. marriage), hereditary (one's father's friend), one who is saved from calamities.<sup>307</sup> According to Kām. (IV. 75-76) the qualities of a friendly king are purity (of heart), liberality, bravery, sharing happiness and sorrow, affection, vigilance (to carry out one's friend's object), truth; and briefly the characteristic of a true friend is devotion to the objects desired by his friend. The purpose for which a friend is made is to secure one of the three *purusārthas*, *dharma*, *artha* and *kāma* (Kām. IV. 72).

This subject of making friends leads on to the well-known theory of *maṇḍala* i. e. of inter-state relationship. Kauṭ. VI 2 and VII, Manu VII 154-211, Āśramvāsiparva 6-7, Yaj. I 345-348, Kām. VIII-XI, Agnīparāṇa 233 and 240, Viṣṇudharmottara II. 145-150, Nītiśākyāmṛta pp. 317-343, Rājantiprakāśa pp. 316-330, Nītimayūkha pp. 44-46 deal with this theory of *maṇḍala* and the six *guṇas* at great length. As the Kautīliya is probably the earliest of these and contains the most elaborate treatment of the subject, a brief outline from it is presented here. The Nītiśākyāmṛta (pp. 311-313) copies the very words of Kautīliya.

The *yojyakṣema* (welfare) of a State springs from peace (*sama*) and exertion (*vyāyāma*). The latter achieves the completion of works undertaken, while *sama* brings about the undisturbed enjoyment of the fruits of undertakings. The (proper) employment of the six *guṇas* (*sandhi* &c.) is the source of *sama* and *vyāyāma*. What results (*udaya*) from these six *guṇas* is either deterioration, stagnation or progress. *Udaya* depends upon human and divine causes which together govern the world. The human ones are *naya* and *apanaṇa*. Human causes are seen (anticipated) and can be operated (by man). *Naya* (good policy) is that out of the human causes from which results *yojyakṣema* (welfare); *apanaṇa* (impolitic way) is that which produces loss (or an unfavourable state). In VI. 1 (last verse) Kautīliya says that a king who understands *naya* and is endowed with the *ātmapuṇas* and all the elements of the State will conquer the whole world, though originally he may have a small kingdom. The *maṇḍala* theory is set out in relation to a king who

307. औरसं कुतसम्बन्धं तथा वंशकनागतम् । रक्षितं स्वसम्बन्धं नितं श्रेष्ठं पदु-  
विषय ३ काम. IV. 74.



is called *vijigīṣu* (the ambitious ruler or conqueror). Kām. VIII 6 defines<sup>288</sup> *vijigīṣu* as a king who aspires to extend his territories, who is possessed of all the seven elements of sovereignty, who has great energy and who makes great efforts. In verses 7-11 he mentions at length his qualities. All our works place before kings this ideal of conquest, domination or self-aggrandizement at the expense of one's weak neighbours. A *vijigīṣu* is a king who is endowed with good qualities (called *ātmāsampat* on p. 45 above) and with the several elements of the State and who is the fountain of policy (*naya*), i.e. who has a definite good policy to pursue. An *ari* (actual or potential enemy) is a king or kings who are the immediate neighbours on the circumference of the kingdom of the *vijigīṣu*. From this it follows that *ari* may comprehend one king, two kings or more who are the immediate neighbours of the *vijigīṣu*. But it should be remembered as insisted upon by the *Nītivākyaṃrta*<sup>289</sup> (p. 321) that there is no inflexible rule that the immediate neighbour is an enemy and that the king whose dominion is beyond the immediate neighbour will be a friend. Contiguity or distance is not necessarily the cause of friendship or enmity, but rather it is the purpose (or object) that makes friends or enemies. All that is meant is that the immediate neighbour is most likely to be an *ari* (a real or potential enemy). A *mitra* (friend of the *vijigīṣu*) is he who is separated (from the *vijigīṣu*) by the intervention of the kingdom of the *ari*. A *śatru* is a neighbouring ruler possessed of the characteristics of an enemy<sup>290</sup> (detailed in Kauṭ. VI. 1). The *pātanya* (to be attacked or invaded by the *vijigīṣu*) is an *ari* who is involved in difficulties. From this it is clear that in the terminology of Kauṭilya *ari* is a generic expression including actual and potential enemies who will generally be on the borders of the kingdom of the *vijigīṣu*. A *śatru* is an *ari* who invites attack or destruction or harassment or reduction. That enemy who is plunged in vices or calamities may be

288. सपञ्चस्तु मङ्गलिभिर्महोत्साहः कुलजनः । नेतुमेवमश्लिष्टश्च निजिषीपुरिति स्मृतः ॥  
काम. VIII. 6.

289. अमन्त्राः शत्रुरेकान्तरं निजमिति नैव एकान्तः । कार्यं हि निजापानिजापयोः  
कारणं न द्वयविकर्षसंभिकयोः । नीतिवा. (वाङ्मन्यस.) p. 321.

290. अराजकीजी ह्यन्धः क्षुद्रपरिवाको विरक्तमङ्गलिरन्यायकृतिरनुको व्यसनी निह-  
न्साहो दैवमगानो धनिकजानकारी असतिरननुबन्धः ह्रीको निर्यापकारी शेषमित्रसंपत् । एवं-  
भूतो हि शत्रुः शत्रुः सप्तपदेभ्यु भवति । नीतिह्रिय VI. 1.

attacked and is then called *yātavya*<sup>291</sup>; one who has no support or has only a weak support is to be extirpated; an enemy who is the opposite of this last (i.e. who has a support or strong support) is to be either harassed or to be reduced. Support (*āśraya*) means a strong fort or a good friend (Kām. VIII. 60). So that a *śatru* is of four sorts (*yātavya*, *ucchedya*, *piḍaniya*, *karsaniya*). Harassment is caused to him who is without *mantra* and a strong army, while one who is strong in *mantra* and army is to be rendered weak in these respects. Both a *śatru* or a *mitra* are of three kinds, *sahaja*, *krtrima* and *prākṛta*. A *sahaja* (natural) friend is one who is related through one's parents (such as maternal or paternal aunt's son); one who is resorted to for wealth or safety is *krtrima* (acquired) i. e. one who has obliged the *vijigīṣu* or has been under his obligations; and the king who is next to the neighbour (i. e. who is separated from the *vijigīṣu* by the intervention of the neighbour king) is *prākṛta* (i. e. because he is a *prakṛti*, an element in the *maṇḍala* theory). A *sahaja* enemy is one who is born of the same family (such as a step-brother), a *krtrima* is one who is antagonistic or incites antagonists (i. e. one who has caused harm to or who has been harmed by the *vijigīṣu*), while the immediate neighbour is a *prākṛta* enemy. The Mīt. on Yāj I. 345 very concisely but lucidly explains all these and the four kinds of *śatru*. The Viṣṇudharmottara (II. 145. 15-16) and the Agnipurāṇa (233. 21-32) say that in their opinion the *prākṛta* is really *krtrima*. Kām. VIII. 56 also speaks of only two, *sahaja* and *krtrima*. Although it is possible that the *vijigīṣu*'s realm is surrounded by many kings, the one who is taken for discussion is the enemy and is to be regarded as in front (*parastāt*) of the *vijigīṣu*. Therefore in front of the *vijigīṣu* come in order the *ari* (immediate neighbour), then the *mitra* (whose domain is next after that of the *ari*), then the *arimitra* (the friend of the enemy who will be immediately after the *mitra* of the *vijigīṣu* and so will be the enemy of the *mitra*), then comes the *mitra-mitra* (friend of the friend of the *vijigīṣu*) and then *arimitra-mitra* (ally of the enemy's friend). When the *ari* is said

291. अतिशयशुक्रः सामन्तः शत्रुः । स्वसनी वालव्य अनपात्रयो दुर्बलात्मनो योच्छेदनीयः । निरपन्ने पीडनीयः कर्षणीयो वा । कोटिरुद्र VI. 2; अरिः दुनश्चातुर्विधः । वालव्योच्छेत्तव्यपीडनीयकर्षणीयभेदेन । अत्र वालव्योऽन्वयश्चुनिरिति । स्वसनी हीनबलौ विरक्तपशुनिः । विदुर्वा निबहीनौ दुर्बलशोच्छेत्तव्यः । पीडनीयो मन्त्रबलहीनः । मन्त्रमन्त्रबलशुक्रः कर्षणीयः । निर्मूलनास्तदुच्छेदं पीडने बलनिग्रहः । कर्षणं तु दुनः मातुः कोशद्वन्द्वपकर्षणम् ॥ इति । मितशत्रु ०० प. 1. 345. These very words are quoted in the सहायनी-विलास p. 36.



to be in front of the vijigīṣu, the ruler of the territory in the opposite direction is said to be in the rear of the vijigīṣu (*pārśvā*) and is called *pārśvagrāha*<sup>292</sup> (lit. one who may seize or attack the heels). He is really an enemy but this special term is applied to him and he causes trouble in the realm of the vijigīṣu when the latter has started on an invasion or is about to start on one. The king who is the ruler of the country beyond the *pārśvagrāha* is called *ākṛanda* (lit. one for whose help a cry is or may be raised by the vijigīṣu). He would ordinarily be a friend being separated from the vijigīṣu by the realm of the *pārśvagrāha*. The friend of the *pārśvagrāha* (who would be immediately next after the *ākṛanda*) is called *pārśvagrāhāsāra* and the friend of the *ākṛanda* who would be beyond the *pārśvagrāhāsāra* is called *ākṛandāsāra*. A *madhyama*<sup>293</sup> king is one whose realm is close to (is on the border of) that of the vijigīṣu and that of the *ari* (the immediate enemy in front) and who is capable of helping (or favouring) both of them whether both are combined in alliance or not and who is capable of resisting either of them individually when the two are not in combination. An *udāsina* king is generally defined as one whose territory is beyond or outside of the sphere of the realms of the vijigīṣu, his enemy in front and the *madhyama*, who is very strong on account of his elements of sovereignty, is capable of helping the above three kings whether they be in combination or not and who is capable of resisting any of the three when they are not in combination. Kullūka on Manu. VII. 153 differs from this explanation i.e. the *udāsina* is a powerful king whose realm may be situated in front or in the rear or even at a distance from that of the vijigīṣu, but he is indifferent for some reason or other to the activities of the vijigīṣu. The Mit. on Yāj. I. 345 observes that the *udāsina* also is of three kinds and the *prākṛta udāsina* is the overlord of the State that is separated from the central state (vijigīṣu) by two intervening States; the

292. वो विजिगीषोर्वा पश्चिमेति पश्चिदुमाने वा पश्चात्कोपे जनपदि स पश्चिमाहः । पश्चिमाहः पश्चिमः स आक्रमः पश्चिमाहनिजनाहार आक्रमश्चिरे च । अति-वाचसायन p. 319.

293. अरिविजिगीषोर्भूयमन्तरः संवत्संहतपोरुद्धसमर्थो निग्रहे चामंडितो-र्वचमः । अरिविजिगीषुमध्यानी वदिः मकुलिम्बो बलवत्तरः संवत्संवत्समानरिविजिगीषु-मध्यामानामुद्धहे समर्थो निग्रहे चामंडितानामुद्धमन्तिः । कौटिल्य VI. 2. p. 261: vide अग्नि 240. 3-5 and विष्णुधर्मोत्तर II, 145. 11-12 for almost the same words in verse. मण्डलादुपहितेवासुवर्त्तमानो बलाधिकः । अनुग्रहे संवत्सारां व्यवसायां च यथे वदुः । अग्निपुराण 240. 4-5. This is quoted by the सरम्भविज्ञान p. 39 without naming the source.

madhyama (or *madhyastha* acc. to *Nītivākyaṃṛta* p. 318) is the immediate neighbour of both the vijigīṣu and his enemy, but wants to remain neutral in the conflict of the two for some reason. It will have been noticed that the vijigīṣu, the enemy, the madhyama and the udāsīna are independent categories, while four out of the remaining eight others viz. mitra, mītramitra, akranda, akrandāsāra can be grouped under vijigīṣu, while the other four viz. arimītra, arimītramitra, pārṣṇigrāha and pārṣṇigrāhāsāra may be grouped under ari. It is therefore that Manu (VII. 155-156) speaks of the four prakṛtis (vijigīṣu, śatru, madhyama and udāsīna) as the *mūla* (basis) of the mandala theory and Kām. VIII. 20 informs us that Maya declared that a mandala was constituted by these four. Kām. VIII. 86 gives it as his own opinion that mandala is constituted by *mitra*, *udāsīna* and *ripu* (enemy) only<sup>294</sup>. Kaṭilya says that the mandala is constituted as explained above by twelve prakṛtis. Uśanas was of the same opinion (Kām. VIII. 22) and Kām. (VIII. 41) states that there were numerous views about the number of the elements of the mandala, but a mandala of twelve kings is quite clear and well-known among all people<sup>295</sup>. Kām. (VIII. 20-41) explains how by various combinations of the elements of the mandala with some elements of sovereignty (viz. ministers, rāṣṭra, durga, kośa, bala) different writers held that the mandala comprised 18, 26, 54, 72, 108 and other numbers of prakṛtis. The *Sarasvatīvilāsa* (pp. 37-41) shows how from different standpoints Uśanas himself argued that the mandala was constituted by one prakṛti, two, three, 10, 21, 108 and that other writers speak also of 4, 5, 6, 14, 18, 30, 36, 44, 60, 72 prakṛtis. All these figures are due to the inveterate habit of scholastic minds to run an idea to the earth and to indulge in divisions and sub-divisions. Even Manu (VII. 157) states that combining each of the twelve members of mandala with the five elements of sovereignty from anātya onwards we get 60 which with the twelve<sup>296</sup> came to 72. It is to this that the

294. Vide the *Viśaṅkara* on वा 1. 343 'वाग्मिब्रह्माकन्दसतराद्वस्त्वग्निमेधासतिजेष्वाभामैवति संज्ञामेदमाथे अन्ध्यान्ते द्विजिनिति योगीश्वरेण न पृथक्कृताः ।'

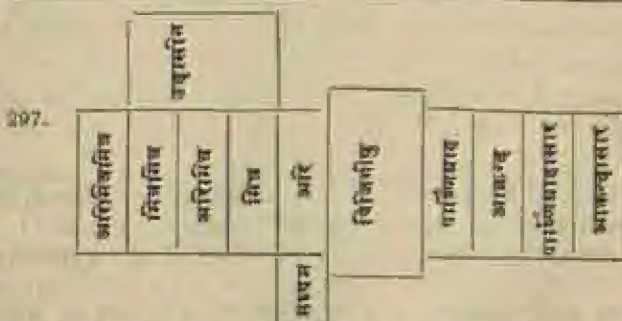
295. इतिप्रकारं बहुधा मण्डलं परिचक्षते । सर्वलोकाधीनं तु शुद्धं द्वादशराजकम् ॥ काम. VIII. 41. This is quoted as a verse of Uśanas in the *Sarvasaṅkṛitān* p. 41.

296. एवं चतुर्मण्डलमङ्गलेषु । द्वादश राजमण्डलतः षड्विंशमण्डलतः सप्तश्लेषेण द्विसप्ततिः । तामां पञ्चत्वं सम्पदः सप्ततिः सिद्धिश्च । षट् सप्ततिः सुप्तं सिद्धिः । अष्टाविंशतिः । कौटिल्य VI. 2. p. 201 : मण्डलस्या च या चिन्ता राजन् द्वादशराजिका । द्विसप्ततिमतिश्चैव योका वा च स्वयम्भुवा ॥ इति 59. 70-71. नीलकण्ठ connects this half with medicine, while some read द्विसप्ततिविधा चैव शरीरस्य परिक्रिया.



Daśakumāracarita (VIII. p. 144) refers when speaking of the tree of *naya* that it has 72 *prakṛtis* as its leaves (*dvīsaptatiprakṛtipatraḥ ... nayavanaspatih*). The central idea of the *maṇḍala* was to keep a balance of power among a circle of States, some being friendly among themselves owing to their position and surroundings, while others would form an antagonistic group. Kaut. (VI. 2) also refers to this number 72, out of which twelve are constituted by kings (*rājapṛakṛtis*) and 60 (five sovereignty elements of each of the twelve) are styled (*dravyapṛakṛtis*). The Śāntiparva (59. 70-71) also refers to a *maṇḍala* of 12 kings and to the number 72. Vide N. N. Law's 'Studies in Ancient Hindu Polity' pp. 195-208 for elucidation of the theory of *maṇḍala*. The theory of *maṇḍala* has this element of truth in it that on a calculation of probabilities the kings who are the immediate neighbours of a ruler are likely to be his enemies (at least potential) and the kings that are beyond the immediate neighbours may make common cause with the central State taken for discourse in order to crush between them a hostile intermediate State. It suggests that diplomacy may take the lines indicated by position and probabilities. The diagram below will<sup>297</sup> illustrate the idea. Manu (VII. 177 and 180) declares that (state) policy consists briefly in this that a king must so arrange all things or means that the ally, the *udāsīna* and the *śatru* cannot harm him or become superior to him. Medhātithi (on Manu VII. 177) remarks that even an ally may become an enemy if his interest so requires (*svārthagatīnīśūcen mītram apyavirahanti*).

Kauṭīlya<sup>298</sup> relates the theory of *maṇḍala* to the theory of *śaktis* (already referred to on p. 171) and the six-fold policy (*śaḍgūnya*).



298. विजिगीषुः सत्त्वपक्षः बाहुसुखपदप्रज्ञः । कौ. VII. 3 ; बाहुसुखश्च बहुति-  
मण्डलं योनिः । सन्धिविग्रहासन्धानसंज्ञपद्वैधीनावाः बाहुसुखमित्रवाच्यः । कौ. VII. 1 ;  
मण्डलानि सन्धानस्य विजिगीषोर्व्यापिनि । वाग्यामित्र इवै कपि सन्धिविग्रहाचिन्तनम् ।  
विष्णुधर्मोत्तर II. 145. 6.

Everything secures success (i.e. his and his kingdom's happiness) according as the king is able to put forth each of the śaktis to their utmost. The aspiring king taking into account his three śaktis may employ the six gunas (methods of policy). The circle of the twelve States gives rise to the employment of the six methods. Differing from Vāṭavyādhi (who said that there were only two methods, sandhi and vighraha) and for once agreeing with the Ācāryas, Kauṭilya accepts the position that there are six gunas and briefly defines them. The *Sarasvativilāsa* (p. 42) quotes a sūtra of Gautama about the six gunas, which is not found in the printed text.<sup>299</sup> Kauṭilya defines the six as follows: *Sandhu*<sup>300</sup> means making an arrangement or agreement; *vighraha* means taking up a hostile attitude; *āśama* means an attitude of indifference; *yāna* means preparing (for attacking one's enemy); *samśraya* means taking shelter (with another powerful king); *dvaiddhibhāva* means making peace with one king and adopting a hostile attitude to another. He then states that a king who is less strong than his neighbour may make an agreement with him, one who is rising in power may take up a hostile attitude, whoever thinks 'the hostile king cannot hurt me nor can I hurt him' may remain indifferent (or neutral) in his own State, one who is endowed with all advantages may march against the enemy, whoever is devoid of strength should seek the protection (of a powerful ruler), and one should resort to a two-fold attitude when one's object can be accomplished by a friend. Some other works give more exact definitions and also define *dvaiddhibhāva* somewhat differently, viz. *dvaiddhibhāva* is dividing one's army into two parts. Vide *Viṣṇudharmottara*<sup>301</sup> II. 150. 3-5 and *Mit.* on *Yāj.* I. 346. Some say that *samśraya* means seeking the protection of the *udāsina* or *madhyama* king. Kauṭilya (book VII) gives the most elaborate treatment of these six gunas and so do

299. तथा च सौमनस्यम् । बहुव्यापानवदनम् सन्निविष्टव्यापाननेद्विभाष-  
समाश्रयकपान्दुगान् परिकल्पयेत् । इति । सरस्वतीविलास p. 42.

300. पणवन्धः सन्धिः, अणुकारो विग्रहः, उपेक्षणमासनम्, अन्त्युत्पयो पानम्, परा-  
यणं संश्रयः, सन्निविष्टव्यापानं द्वैधीभावः इति षट्गुणाः । परस्माद्धीपमानः सन्दुधीत ।  
अन्त्युत्पीयमानो विग्रहीवात् । न तं परो गतं परमुपहन्तुं शक्नु इत्यस्तीति । व्यापिष्यद्युक्तो  
वाचात् । अकिङ्किनः संश्रयेत् । सहायसाधने कार्यं द्वैधीभावं गच्छेत् । इति गुणापरव्यापनम् ।  
कौटिल्य VII. 1. Vide *Raghuvamśa* 8. 21 where Kālidāsa follows this 'पण-  
वन्धबहुव्यापानपणवन्धः बहुव्यापुष्कं समीक्ष्य ताकलम् ।'

301. पणवन्धः सन्धिः सन्निधायकारस्तु विग्रहः । त्रिभीषोः शत्रुविषये धानं वाचा विधी-  
यते । विग्रहेषु स्वके देवे विनिविष्टासनमुत्पते । बलायैव दधानं तु द्वैधीभावं तदुत्पते । उदासीनं  
मध्यमे वा संश्रयसंश्रयः स्तुतः । विष्णुधर्मोत्तर II. 150. 3-5; द्वैधीभावः स्ववलरप द्विधा-  
करणम् । निता, op. वा I. 346.



Manu VII 160 ff, Kām. IX-XVI, Viṣṇudharmottara II 145-150, Agnipurāṇa 240, Mānasollāsa pp. 94-116, Rājantīprakāśa pp. 324-413. Only a few remarks are all that considerations of space allow. Manu ( VII 162-168 ) states that each of the guṇas is of two sorts. Kām. IX. 2-18 and Agni 240 enumerate sixteen kinds of sandhis and Kām. defines them. His treatment is based on Kauṭ. VII. 3. Kauṭ. ( VII. 3 ) says that when a weak king is attacked by a powerful king who is the leader in a circle of States, the former should at once submit and sue for peace on condition of offering his army, treasury, himself and his territory. Then he says that sandhis made on condition of offering the army are of three kinds viz. *ātmaṃśa* ( lit. offering himself as the prey, which involves the condition that the king himself with a fixed number of troops or with the flower of his army would present himself when called ), *ātmarakṣaṇa* ( saving himself, where the condition is that the commander-in-chief or the crown prince would present himself with an army ), *adrṣṭa-purusa* ( lit. in which no person is definitely prescribed, where the agreement is that some one on the king's behalf or the king himself should march with the army to some place as required by the invader ). These sandhis are called *daṇḍapānata* ( lit. in which submission is made with the army ). Sandhis made on condition of offering the treasury ( *koṭi-pānata* ) are *parikṛpa* ( lit. price, where by offering the treasury the other elements of *vājya* are kept free ), *apagraha* ( where as much money is offered as can be carried on a man's shoulder ), *kapāli* ( lit. broken half of a pot, where an immense amount of money has to be paid ). Sandhis called *deti-pānata* ( submission with offer of territory ) are *ādīeta* ( where a part of the realm is ceded and the rest saved from the invader ), *ucchanna* ( where all the realm except the capital which has been deprived of all its wealth is offered ), *apakraya* where by offering the produce of the land the kingdom is freed, *paribhūṣaṇa* where the agreement is to pay more than the produce of the land. Kām. adds some varieties and remarks ( IX. 21-22 ) that *upahāra* ( offering a present ) is the only *sandhi* ( of which all the rest are varieties ) in his opinion, that only the *mitra sandhi* ( alliance of friendship without the offer of land, money or anything else ) does not come under *upahāra*.<sup>302</sup> Kām. IX. 20 and Mānasollāsa ( II. 11.

302. एक उपोपहारस्तु सन्धिरेतन्मते हि नः । उपहारस्य मेदास्तु सर्वेमेव उपविष्टाः । अनिर्घोषा बली वरमावृत्तव्या न विवर्तिते । उपहारान्ते तस्मात् सन्धिरप्येव न विद्यते ॥ कामन्दक IX. 21-22.

pp. 94-95) speak of four sandhis, *mitra*, *parasparopakara* (agreement to help each other), *sambandhaja* (by offer of a princess in marriage) and *upahāra*. An interesting example of a sandhi is furnished by the Lekhapāñcāsika which gives a form of treaty dated Monday, Full Moon of Vaisākha in *śamāt* 1288 (1232 A.D.) between Yādava king Singhana of Devagiri who is styled *mahārājādhirāja* and Lavanaprasāda (Lavanaprasāda) a Vāghela king who is styled *rūnaka* and *mahāmāyādeśvara*, whereby the high contracting parties agreed not to invade each other's possessions, to combine and oppose anyone else who invaded one of them. Vide Bom. G. Vol. I part 1 p. 200 based on Bhandarkar's Report on the search for Mss. 1882-83 pp. 38-40. Kām. IX. 23-26 and Agnipurāṇa 240. 10-13 mention twenty kinds of persons with whom *sandhi* should not be made, Kām. (IX. 27-41) states the reasons why it should be so and in IX. 42-52 seven persons are enumerated with whom he recommends *sandhi* and gives reasons. A king should make sandhi even with one equal in strength (not only with one who is more powerful), since victory in battle is doubtful (Kām. IX. 59).<sup>303</sup> Kaut. uses a striking simile when he says that if one king comes in conflict with an equal they both will be destroyed in the same way as two unbaked earthen pots striking against one another. If a more powerful king rejects the proposal of a weaker king for sandhi, the latter should take up the attitude of offering his army or follow the course prescribed in book XII (*ā bahiṣam*). In VII. 12 when dealing with agreements between kings, about undertakings to build forts or irrigational works or forests &c. Kaut. makes very interesting remarks about land routes being superior to water routes and about the route to the Deccan and the south being more profitable than the one leading to the Himalayas.<sup>304</sup> Kām. X. 15 (= Agni 240. 19) says that *vira* (hostile attitude) is of five kinds viz. that of step-brothers, that due to land (seizure of or encroachment on lands or houses), due to woman (carrying away one's wife or loving the same woman), due to words (cutting speech) and due to wrongs. Kām. X. 2-5

303. मन्त्रिमित्रोऽमेनमपि मन्दिदधो विजयो दुषि । न हि संघटितं कुर्वाद्दिह्वात्त  
दुश्चरति ॥ काम. IX. 59.

304. रथलघयेति हेमवतो इक्षिणापयाच्छेदात् । दशपथस्य द्वाभ्यां जिनस्य द्वाभ्यां  
पथाः सारवत्तरा इत्युच्चार्याः । नेति कौटिल्यः । अथवा जिनस्य दशपथजः । दशपथस्य  
द्वयत्तं । सुवर्णपथाश्च द्वाभ्यां । इक्षिणापये । कौटिल्य VII. 12.



( = Agni. 240. 20-24 ) enlarges upon the 16 ways in which *vigraha* ( hostility ) springs, such as seizing the kingdom, wife, districts, vehicles ( horses, elephants ) and wealth of another, pride, harassment of subjects &c. When a king feels that his own army is well-nourished and pleased, that his subjects are prosperous and contented and that the army and subjects of another are the opposite of this, then he may adopt a hostile attitude and when he feels sure that he will secure one of the three fruits of hostility ( viz. land, ally and wealth—Kām. X. 26-28 ). Kauṭ. VII 15 deals with the attitude and conduct of a conquered king who has offered to the conqueror his army ( *daṇḍopanata-ṛṣṭha* ), while VII 16 speaks of the conduct of the *daṇḍopanāgī* ( an aspiring king who wants to make by means of his army another king submit to him ). *Yāna* means marching for invasion on the part of a *vijigīṣu* whose army and prowess are of the highest and whose subjects are contented on account of his good qualities ( Kām. XI 1 ). The Matsya 240. 2 and the Agnipurāṇa ( 229. 1-2 ) add that when the enemy in the rear is overwhelmed by an *ākramda*, then the *vijigīṣu* should start on an invasion or when the enemy is plunged in calamities. But before actually invading the enemy who is *yātavya* ( chosen for attack ) an ambassador ( *dūta* ) should be sent ( Kām. XII 1 ) to see whether the enemy will submit without fighting. That is, there was to be no war without negotiations and an ultimatum. In the Mahābhārata ( Udyoga 83. 5-7 ) it is said that Kṛṣṇa started as an envoy from the Pāṇḍavas to the Kauravas at the end of *śarad* ( autumn ) on the Revatī nakṣatra in the month of Kārtika ( verse 7; *Kaṁmade māsi revatyām śaradante hindāgame* ). In the Purāṇas and the medieval digests elaborate rules are laid down about the religious and propitiatory ceremonies before starting on an invasion. The Viṣṇudharmottara II. 176 and Agnipurāṇa 236. 1-18 require that for seven days before starting on an invasion the king is to engage in the worship of and make offerings to various gods, first to Gaṇapati, then to all the guardians of the quarters, the planets, Aśvins, Viṣṇu and Śiva and the images in the temples of his capital. Then he is to note what good and bad dreams he sees on those days in his sleep and judge accordingly. Vide Matsya 242, Agnipurāṇa 229 for dreams portending good and evil. This prognostication of good fortune from dreams is very ancient. The Chāndogya Up. ( V. 2. 8-9 ) quotes a verse to the effect that when a man is engaged in the performance of solemn sacrifices for securing some object and sees a woman in a dream he should feel that his rite will be

crowned with reward. Similarly the *Alt.*<sup>305</sup> *Ār.* III. 2. 4 mentions the signs of approaching death, one of which is to see in a dream a dark person with black teeth. Both these passages are quoted by Śāṅkara in his bhāṣya on *Vedāntasūtra* II. 1. 14. The *Viṣṇudharmottara* II. 132-144 (based on *Garga*), II. 164, *Matsya* 228-241, *Agni* 230-232 are concerned with the portents and omens in the heavens, in the sky and on the earth and rites (*śāntis*) meant to avert the evil prognostications from them. The *Manasollāsa* II. 13 pp. 97-112 and *Rājantīprakāśa* pp. 331-351 also deal with these and other astrological matters, which are passed over here, though some of them are very interesting e. g. *Viṣṇudharmottara* II. 135. 1 refers to the weeping and dancing of images. On the 6th day from the time the rites begin which is the day previous to the starting of the invasion the king undergoes a ceremonial bath for victory called *jayā-bhizaka*. This is described at great length in the *Rājantīprakāśa* pp. 351-395 quoting extensive passages from the *Līngapurāṇa*. The ceremony of *Jayābhisaka* resembles the coronation ceremony in many respects. The *Matsyapurāṇa* 243. 15-16 and the *Viṣṇudharmottara* II. 163. 18-31 contain the same long list (with very slight variations) of articles, persons and animals the sight of which is auspicious when the king starts on an invasion and *Matsya* (243. 2-14) contains another long list of inauspicious sights. A few of the auspicious ones are white flowers, jars full of water, cows, horses, elephants, fire in flames, a courtesan, dūrvā grass, gold, silver, copper, all gems, sword, umbrella, banner, corpse not accompanied by crying persons, fruits, the *śarvika* sign. Among the inauspicious things and sights are dark grains, cotton, dried cowdung, fuel, jaggery, tonsured or naked man or man with dishevelled hair or wearing reddish robes, a lunatic, a cāpāla, a pregnant woman, broken pot, chaff, ashes, bones. The *Manasollāsa* II. 13 verses 811-823 (pp. 102-103), *Nītimayūkha* pp. 58-59 also give long lists of inauspicious and auspicious sights or events. *Matsya* 243. 27 and *Viṣṇudharmottara* II. 163. 32 are both careful to add that all evil signs are counterbalanced by the confident (or joyous) frame of the mind, which is the highest sign of victory.<sup>306</sup> *Gaut.*

305. स यदि क्षिप्रं पश्येत्समुद्धं कर्मेति विद्यात् । तत्रैव श्लोकः । पदा कर्मसु काम्येषु क्षिप्रं स्वप्नेषु पश्यति । समुद्धिं तत्र जानीयात् क्षिप्रमप्यनिवृत्तिम् । छान्दोग्य V. 2. 8-9; न क्षिप्रानि जीवेत्पतीति विद्यात् ... अथ स्वप्नः । इदं कृष्णं कृष्णदन्तं पश्यति स एव हन्ति । देव. आर. III. 2. 4.

306. मनसस्तुष्टिराद्य परमं जयलक्षणम् । एकैः सर्वसिद्धयानि मनसस्तुष्टिरकलः ॥ यास्य 243. 27 = विष्णुधर्मोत्तर II. 163. 32.



( XI. 15-17 ) prescribes that the king should heed the advice of astrologers and of those who are adepts in averting the effects of portents and perform the rites indicated by them such as grahaśānti, rites on auspicious days and of *mṛtyugāma*, rites of black magic against his enemy &c. Kaut. IX. 7 ( at the end ) says that the removal of divine calamities is brought about by the worship of deities and by honour to brāhmanas and by performing rites prescribed in the Atharvaveda. Manu VII 82 and Yaj. I. 315 state that gifts made to learned brāhmanas are an inexhaustible treasure for the king. The Rājadharmakāṇḍa ( p. 109 ) quotes the Brahmapurāṇa requiring the king to perform two Lakṣahomas every year and also a Kotihoma. The Rājadharmakāṇḍa ( p. 113 ) and Rājantīprakāśa ( p. 144 ) quote Udyogaparva 33. 93-95 which set out eight indications of a man's approaching fall viz hating brāhmanas, opposing brāhmanas, depriving them of their wealth, desire to kill or harm them, taking pleasure in calumniating them, not liking their praise, not remembering them in religious acts and getting angry when they make requests.

It may be useful and interesting to see how in very ancient times the king was made ready for battle. The Āsv. Gr. 8. ( III 12 ) says: when a battle is impending (the purohita) should make the king put on his armour (in the following way). The purohita should stand to the west of the chariot (of the king) muttering the hymn (Rg. X. 173) 'I have brought thee &c.'. He should hand over to the king his armour with Rg. VI 75. 1 'when the man with armour advances it is like the appearance of the cloud &c.'. He hands over the bow with the next verse (Rg. VI 75. 2 'dhanvāṇa gā). The purohita should make the king recite the next verse (Rg. VI 75. 3) and should himself mutter the 4th verse (Rg. VI 75. 4). He should hand over the quiver to the king with the 5th verse (Rg. VI 75. 5). When the chariot turns in the direction intended the purohita should mutter the sixth verse (Rg. VI 75. 6). He should recite over the horses the 7th (Rg. VI 75. 7). He makes the king recite the 8th (Rg. VI 75. 8) when the latter looks at the arrows and makes the king recite Rg. VI 75. 14 ('he envelopes his arm' &c.) when the latter fastens to his arm the leather (that protects his arm against the bow-string). When the king is being taken forward in the chariot by the charioteer the purohita ascends the chariot near the king and makes him recite the hymn called Abhivarta (Rg. X. 174) and the two verses (Rg. VIII 101. 3-4). Then the priest looks at the king with

the Apratiratha hymn (Rg. X. 103 'āsūḥ sisāno'), the Sasa hymn (Rg. X. 152 'sasa ittha') and the Sauparna hymn 'pra dhārayantu madhuno ghṛtasya'.<sup>30</sup> Then the king should stand in order all directions in his chariot. He should stand in that direction in which the Sun (by day) or Venus (by night) shines and give fight from that direction. The king should pass his hand over the drum with the three verses (Rg. VI. 47. 29-31 'all with breath (or roar) the heaven and the earth'). The king should discharge arrows with Rg. VI. 75. 16 and the purohita should mutter Rg. VI. 75. 17 ('where the arrows fall together &c.) when soldiers are fighting, or the purohita may direct or teach (the king to recite from the above such verses as are appropriate to his actions).<sup>31</sup> In the Harṣacarita (7th Uchhvāsa first paragraph) Bāna favours us with a realistic and graphic description of the preparations made when Harṣa marched out from his palace on his *digvijaya*. The astrologers found out an auspicious day and *lagna* (sign of zodiac

307. This hymn is found in no *śraṭhita*. Śāyana in his comment on Ait. Br. 29. 9 (where the sauparna hymn is mentioned) gives an alternative explanation saying that the sauparna hymn referred to is the one declared in the gṛhyasūtra viz. 'pra dhārā yantu &c.' i. e. he does not read 'pradhārayantu' as in the printed Ait. Br. on Ait. Br. 37. 7 (where the Ahhavaria, Sāsa, Apratiratha and Sauparna hymns are mentioned) the comment of Śāyana as printed reads 'pradhārayantu'.

308. संश्राने मरुतोऽपि राजानं संगतयेत् । आ त्वा हार्यमन्तरेषीति पश्चाद्वयस्यावस्थाव । अश्वत्थेभ्यो भवति प्रतीकमिति त्वत्त्वं प्रयच्छेत् । उत्तराया पक्षः । उत्तराया वाचयेत् । त्वत्त्वं चतुर्थी जपेत् । वज्रमग्नेरुधिं प्रयच्छेत् । अभिगर्जमाने वज्रीन् । सप्तम्याभ्याम् । अङ्गनी निगमनेशमार्थं वाचयति । अहिरिव घोषैः पर्पेति बाहुमिति तलं गङ्गाभारम् । अग्नें सारवमानमुपाकृष्टानीवर्तं वाचयति य यो वां निज्वाहयन्ति च द्वे । अग्नेमग्नीषितामहिरिवज्ञासौपर्णैः । य धारयन्तु मनुष्यो धृतरथेति सौपर्णम् । सर्वा विभोःशुभारिपापात् । आदित्यमोक्षकं वाकस्याव प्रयोषयेत् । उपश्यास्य धूमिनीकृतं यामिति तुचेन दुग्धुभिर्ममिचुतेत् । अश्वत्था परापतेतीधुमिर्निर्जयेत् । यश्च बाणाः संपतन्तीति युष्मन्मामेषु जपेत् । संशिरवाद्या । आश्व. व. III. 12. With आदित्यमोक्षकसं वा compare आन्तिपर्ण 100. 20 'वसो वायुर्धतः स्वर्गो यतः शुक्रस्ततो जयः । पूर्वं पूर्वं स्वाव प्रवां संनिपाते युधिष्ठिरः'. This shows that the king desiring victory should not face the Sun or Venus (अश्वत्थ) but should have them behind him and that he should not have the wind blowing in his face but blowing behind him. कान्दिदास in the कुमारसंभव III. 43 'हृदिप्रपत्तं परिहृत्य त्वत्त्वं कामः पुरः शुक्रमिव प्रपाते' refers to this, on which मल्लिनाथ quotes a verse 'पतिशुक्रं पतिशुधं शरवद्धारकमेव च । अपि शक्रसमो राजा हस्तमग्नी निषर्जते व' . The युक्तिकल्पतरु (ed. by N. N. Law) p. 176 says 'अस्तस्तु देवलमन्त्रेऽप्यग्ने दृष्टोऽग्ने' (verse 79). Oldenberg's translation (in S. B. E. vol. 29 p. 214) 'he should commence the battle in the line of battle accepted by Aditya or Dharma' is wrong, as will be seen from the above quotations. Hopkins in J. A. O. S. XIII. p. 193n simply follows Oldenberg's translation holding Aditya and Autanava to be vyāhāra.



rising on the eastern horizon) indicative of his conquest of all the four quarters, Harsa was bathed in water poured from silver and golden jars, performed worship of Śiva, offered oblations into fire that sent up flames turning from left to right, made gifts of jars full of sesame grains and of cows whose hoofs and horns were tipped with gold, sat on a throne on which tiger-skin was spread &c.

When starting on an invasion the king was required to perform a rite called *nirājanavidhi* which consisted in waving lights before horses, elephants, banners, armies &c.<sup>309</sup> In II 30 Kautilya<sup>310</sup> prescribes that on the 9th day of Āśvina lights should be waved before horses and at the beginning and close of invasions and in times of diseases. In II 32 Kautilya speaks of the waving of lights before elephants thrice in the cāturmāsya (from about July to October) and at the time when two seasons meet. Kālidāsa in the Raghuvamśa 4.25 refers<sup>311</sup> to the performance of this ceremony when Raghu started on his digvijaya and states (in 17-13) that dūrvā grass, barley sprouts and the bark of the palāśa tree were required in the Nīrājanavidhi. Kām. IV. 66 speaks of waving lights before horses and elephants (nirājita-hayadvipah). The Bṛhatsamhitā, chap. 44 (verses 16-28) deals with the ceremony of waving lamps before horses, elephants and man. This ceremony had to be performed every year in the month of Āśvina from the first to the 9th day of the bright half or on the 8th, 12th, or 15th of the bright half of Kārtika (acc. to the Bṛhatsamhitā 44.2) by those who owned horses and also elephants. It is also described in the Śaunakīya II. 8, Agnipurāṇa 268, Viṣṇudharmottara II. 159 (quoted at length in the Rājaniṭi-prakāśa pp. 434-438), Kālikāpurāṇa 88-15 ff., Nirṇayasindhu II. p. 169, Yuktikalpataru p. 178. The Bṛhatsamhitā describes it as follows:—In the north-east of the capital an ornamental arch of some holy tree was to be erected 10 cubits wide and 16 high. Round the necks of horses threads smeared

309. राज्ञा पात्राविधिं वश्ये निधीयुषां परावनीम् । नीराजनाविधिं कृत्वा सैनिकाञ्चाभ्येक्षत । यजामन्त्राण्युवाचन्पानिनि पात्राकरो मतः ॥ युक्तिकल्पतरु p. 178

310. नीराजनाविधौ तु जे कारयेन्नवमेऽहनि । पात्रादावपमाने वा स्याथौ वा ज्ञातिके रतः ॥ अर्थशास्त्र II. 30 last verse; तिप्त्वी नीराजनाः कार्यान्वातनां पशुसन्निधौ । अर्थशास्त्र II. 32, last verse but one. उपपद explains नीराजन as नीरेण जलेन अजने स्वर्जनम् (on तुल्यसंहिता 43.1). It is possible to derive the word from निर + राजन् (from राज्).

311. तस्मै सम्पश्यतो बह्विर्वाजिनिराजनाविधौ । यदक्षिणाक्षिर्पादौ तस्मै च नव वदौ ॥ रघु 4. 25.

with saffron paste and marking nut, with rice grains and white mustard and *kushta* plants tied on them were to be suspended. For seven days mantras addressed to the Sun, Varuna, Visve-Devas, Prajapati, Indra and Visnu were to be recited over the horses, during those days the horses were not to be harshly addressed nor struck with a whip and auspicious words were to be addressed to them, conches were to be blown, drums beaten and singing indulged in before them. On the 8th day, to the south of the arch a shed with its face to the north and covered with *kusa* grass and barks was to be erected and in front of it on a *vedi* fire was to be lighted and various materials and plants such as sandal-wood were to be collected and thrown into jars full of water, various foods were to be offered as *balli*, fuel sticks of *khadira* and other holy trees were to be brought. The king seated on a tiger-skin and facing the east should sit near the fire together with an astrologer and horse doctor and should follow at the direction of the purohita the procedure laid down for *Grahayajña* (sacrifice to planets) and the raising of Indra's banner. A horse and an elephant possessing the most auspicious signs should be bathed and honoured with new white cloth, sandal-wood paste, garlands and incense and should be brought to the foot of the arch near the shed with sweet words to the accompaniment of music and conch-blowing. The movements of the horse and elephant should be watched and prognostications made therefrom about victory &c. A ball of food over which mantras have been recited should be offered to the horse and if the latter smells it or eats it that is a sign of coming victory. Dipping an *udumbara* twig in the jars filled with water and plants the purohita should touch therewith the horse, the elephant, the king and his soldiers to the accompaniment of mantras. Then making an effigy of the enemy the purohita should pierce it with a sharp and pointed stave in the region of the heart with incantations from the *Atharvaveda* and break it. The purohita should pronounce over the bridle *vedic* mantras and insert it in the mouth of the horse, which the king should ride and proceed in the north-east together with his army, with drums beaten, conches blown and banners displayed. This is a propitiatory rite (*śānti*) as said by *Varāhamihira* (*Bṛhat-saṃhitā* 44.2) and the *Agnipurāṇa* 26.8 and 31 and must have been in vogue centuries before *Kaṭilya* flourished.

The duty of the conqueror, after vanquishing his opponent, to place on the throne of the late king his son or a kinsman and to respect the customs and usages of the territory conquered has



already been set forth above (p. 71). Conquests resulted in either loss of territory or more generally in the offering of tribute of various kinds to the conqueror viz. wealth (gold and silver), horses, elephants, pearls and gems, fine cloth &c. Particularly horses from Kāmboja, Bālīhika, Gāndhāra and other countries in the north and west were highly prized. Vide *Sabha* 51, 10, 53.5, *Udyoga* 86. 6, *Drona* 156. 47, *Sauptika* 13. 2; and *Sabha* 27, 27. 28. 6 for horses as tribute. In *Sabha* 30, 28-30 all the above kinds of tribute are said to have been levied from the Mleccha kings by Bhīma.<sup>312</sup>

Kauṭilya devotes one book (VIII) to the discussion of *vyasana*. *Vyasana*<sup>313</sup> means 'what deprives a man of great good' (from the root 'as' to throw with 'vi'). According to Kauṭilya *vyasana* may be either the absence of qualities (such as noble birth) or the opposite of such qualities, faults (such as hot temper), excessive attachment (to women &c.), harassment (by invasion or calamities like famines). So *vyasanas* may broadly be divided into two classes viz. calamities and faults due to *kāma* (passion) and *krodha* (hot temper). The view of many *śāstras* is that of the *vyasanas* of the king, ministers, the people of the realm, fort, treasury, army and ally, the *vyasanas* of each preceding one are more serious than those of each succeeding one. From the discussion in VIII. 1 it appears that Kauṭilya in this case agrees with the *śāstras*. Differing from Bhāradvāja Kauṭilya holds that the calamities befalling a king or his vices are more serious in their consequences than those of the ministers, since it is the king who appoints the ministers, the *purohita*, other servants and superintendents of departments and he can employ others in their places and since the rise or fall of the people depends upon him. Disagreeing with Viśiṣṭakṣa Kauṭilya holds that the *vyasanas* of ministers have more serious consequences than those of the people, as all (national) undertakings proceed from the ministers, as the security of person and property from internal and external enemies, adoption of remedies to resist calamities, recruiting of army, collection of taxes are all in their hands. Differing from the school of

312. न मर्षाद् मोक्षस्तुषतीन् सागरादुत्पत्तिनाः । करमाहारपापास राजानि विविधानि च ॥ नन्दनामुदङ्गानि मणिमौक्तिकान्मलम् । काञ्चनं राजतं चैव विद्रुमं च महाधनम् ॥ ते कोटिरत्नसंख्येन कोटोर्वै महता मदाः । अम्बुधरेन्मग्नमजानं पल्लव्येन पाण्डुरम् ॥ समा 30, 28-30.

313. सुखमालोदयममात्रं मदीयं यमकः पीडा वा व्यसनं । पराधनेन जेयस इति व्यसनम् । कोटिरु VIII. 1. Vide Kām, XIII, 19 and नीतिशा. p. 177 for a similar derivation. व्यसनाकार्यकारणेन पुनर्वै जेयस इति व्यसनम् । नीतिशा.

Parāśara, Kauṭilya is of opinion that the vyasana of the people has graver consequences than that of the fort (or capital), for forts, treasury and army, all frugation and agricultural work, stability, bravery and abundance (of things) spring from the people. Against Piśuna, Kauṭilya states that the calamities befalling the fort (or capital) give rise to graver consequences than those of the army for the reason that it is in the fort that the treasury and army are kept safe. Kauṭ. (VIII 2) holds that internal troubles are more serious than external ones and troubles due to ministers are the most serious of all internal troubles. Kauṭ. prefers an ignorant ruler (who has not studied śāstras) to a king who is bent on swerving from the dictates of śāstras which he knows; he prefers a king suffering from illness to a new king (a conqueror), a weak but a high-born king to a strong but low-born one. In VIII 3 he enumerates the several faults and vices which have already been stated above. (p. 54). After remarking that ignorance and lack of training are the causes of vices or faults, Kauṭ. discourses on the relative seriousness of the several faults or vices and holds that gambling is worse than hunting, that sexual passion is worse than gambling, that drinking is worse than sexual vice and that gambling is the special cause of dissension among *saṅghas* (corporate assemblies) and among families of nobles that have the characteristics of *saṅghas*. In VIII. 4 he states that among divine visitations like fire, flood, epidemics and famine, floods are more devastating than fire, diseases and epidemics are less destructive than famine, that the loss of outstanding<sup>314</sup> men is more serious than that of common men even in large numbers, since there can hardly be one eminent man among a thousand ordinary or inferior men. He holds that the trouble caused by the Crown Prince is a lesser evil than that caused by a favourite queen. In VIII. 5 Kauṭilya holds a discussion on the troubles arising from the army and allies. He first enumerates thirty-three matters that may cause trouble with the army, such as not giving due respect to it, or showing contempt to it, not dispensing the pay at the proper time, not preventing diseases from attacking it, having soldiers who are very fond of their wives. He then takes pairs of troubles out of these and states which is the lesser evil of the two. Then he deals with causes that lead to the loss or defection of allies.

314. नेति कौटिल्यः—शक्यः सुदृढः नृपि सन्मार्गे वाहुरकात्। सुदृढात्मा न सुदृढः । सहायेषु हि सुदृढो मन्त्रयोको न वा सन्मन्त्र्याधिक्यान्नपत्वात् सुदृढात्माति।  
को. VIII. 4.



In the *Rājadharmakāṇḍa*, the *Rājanītiprakāśa* and other works the king is advised to celebrate several rites and festivals which may be briefly referred to here. They were meant as propitiatory rites to avert national calamities and also to keep the populace in good humour and to afford enjoyment to people. The *Rājadharmakāṇḍa* (pp. 115-117) and the *Rājanītiprakāśa* (pp. 416-419) quote about 35 verses from the *Brahmapurāṇa* to the effect that the king is to celebrate in one or more of the six months from *Vaiśākha* festivals (*devayātrā*) in honour of various deities such as *Brahmā*, the gods, the Ganges, *Vināyaka*, *Nāgas*, *Skanda*, the *Ādityas*, *Indra* and *Rudra*, the *Mātṛs* (*Durgā* and others), the Earth, *Viśvakarman*, *Viṣṇu*, *Kāmadeva*, *Śiva*, the Moon respectively on the *tithis* from the 1st to the 15th. The same two works quote a passage of 18 verses from the *Skandapurāṇa* about the festival of moonlight and also the rite of raising the banner of *Indra* and the latter quotes (pp. 425-433) a long passage from the *Viṣṇudharmottarapurāṇa* also. Vide H. of Dh. vol. II pp. 825-26 for description of the festival of *Indra's* banner. They describe the worship of *Devī* on the 8th and 9th days of *Āśvina* (from the *Devīpurāṇa*) when animals were sacrificed, the gifts of cows on the *Amāvāsyā* of *Kārtika*, the rite called *Vasordhārā* (stream of wealth). The details of all these are passed over here for want of space.

## CHAPTER X

### PURPOSE OF THE STUDY OF RĀJADHARMA AND THE ENDS OF THE STATE

In the preceding pages an attempt has been made to present a picture of the theory and practice of Government and statecraft as delineated by ancient and medieval Indian writers on *dharmaśāstra* and *arthaśāstra*. One feature that would strike any reader is the religious colouring with which all theories and ideals are suffused. Another is that the ideal set before rulers and their officers is a highly moral one. Several faults have been found in the theory and practice inculcated by the writers. Except for some centuries before and after the Christian era, monarchy has been the only form of government known in India and monarchy alone is generally envisaged by Indian writers. The result has been that the king came in practice to be almost synonymous with government and the State, though a very lofty sense of his duties and responsibilities was impressed on the king. Another defect lies in the almost total absence of discussion on the form and working of oligarchical or republican States. Besides, once the main outlines of the theory of the State were established by the first writers on polity, for about two thousand years succeeding generations of authors were content to follow in the old grooves and hardly ever made any fresh approach to the problems of government or started any rival conceptions or theories. Ancient authors were content to induce the kings and the people to support as far as possible the *status quo*. They thus provided for a more or less static society and did not encourage any dynamic thoughts or movements. There was no strong or assertive middle class nor was there any organized Church. Though the *brāhmanas* were a sacred class, they were not organized as a body and had to depend only on exhortations and texts to exert influence on the monarchs. It may no doubt be pointed out that similar conditions prevailed almost all the world over. Small States, constant wars and invasions were the commonest phenomena in Europe till the 15th or 16th century and no reproach should be levelled at the Indian writers alone. It cannot, however, be gainsaid that even after experiencing the constant plundering expeditions and religious persecutions of Scythian, Hun and Moslem invaders from the



1st to the 11th and the following centuries the able thinkers, warriors and statesmen of India did not enlarge their limited horizon and find means to consolidate and weld together into a united block the numerous small States that were scattered all over India. They could have put forward a common idea and ideal before all the provinces and peoples of India viz. meeting the onslaught of plundering and fanatical invaders, which, if properly handled, would have acted as a unifying force. It was to some extent only in Vijayanagara and Mahrāṣṭra that in medieval times means were adopted to weaken the power of the invader, to present a solid front and establish powerful Hindu kingdoms. The old writers spun the same old webs of theories that had been there for centuries, they did not formulate new theories nor did they take steps to infuse into the common people a sense of solidarity and unity as Indians and did not inculcate deep and abiding sentiments of patriotism similar to those we find in Western countries for the last two or three hundred years. In spite of such drawbacks it will have to be conceded that ancient Indian writers made substantial and independent contributions to the theory and practice of Government and that their handiwork can stand comparison with the ancient and medieval thought of most countries of the world.

It may be asked: What in these days is the use of the study of the theory and practice of Government in ancient India? It may be argued that the world is now hoping, as promised by the great leaders of the United Nations, to enjoy several freedoms, that great expectations are created in the minds of millions of down-trodden peoples, and that all peoples including Indians will be faced in the near future with democracy and great problems of reconstruction and that knowledge of the past cannot throw much light on the pressing needs of the present or the serious questions that will confront all in the latter half of the 20th century. It may be conceded that the situation in which we find ourselves now and in which we shall be placed in the near future is unique and much light cannot be thrown by a study of the past on the solution of the problems that will have to be tackled by us. But that study has certain useful purposes to serve. Millions of people in India as well as in the world are hardly better than hewers of wood and drawers of water in their own countries. They intensely desire to be masters in their own countries and of their own destinies. The iron has entered

deep in their souls that for countries as well as individuals freedom of action spells happiness and dependence on the will of others is misery (as Manu laconically puts in IV. 160), that men who have no independence are hardly human beings (as the Mārkaṇḍeya 125-29 says).<sup>315</sup> The study of the past will give us hope and convey the assurance that we have in the past conducted governments and administrations of vast empires, that we evolved theories and practices which were not inferior to those of some of the most advanced nations of the world, that, allowed opportunities and scope, we may rise equal to what the circumstances may demand of us. On the other hand, such a study will stimulate thought, focus our attention on our mistakes and short-comings, make us be careful to avoid pitfalls and give us indications of the directions in which we must make a new orientation in our ideals and practices.

At the end of this section on Rājadharmā, a question may be asked: what were the ends or purposes that the State in ancient India placed before itself or the dharmaśāstra and arthaśāstra writers said the State should place before itself? The end of the State has been differently stated by different philosophers and theorists of the West from ancient times to the present day. To take only a few examples. To Plato and Aristotle<sup>316</sup> the end of the State was good life for the citizens. But it is not very easy to say what is meant by the good life. Bluntschli in 'Theory of the State' (Oxford, 1885) Book V Chap. IV p. 300 formulates the proper and direct end of the State to be 'the development of the national capacities, the perfection of the national life and finally its completion', provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity. This definition is not easy to grasp. There is no agreement as to what is the destiny of humanity and the concepts of nation and national life are hardly older than a few centuries even in Europe. Nor 'nation' one may substitute the word 'country'

315. सर्वे एतन्मं दुःखं सर्वमात्मनः सुखम् । एतद्विद्यात्मनो ह्यस्य सुखदुःखयोः ॥ मनु. IV. 160; स्वतन्त्रता नमुन्यपानां परतन्त्रा सदापन्ता । नरोपि परतन्त्रो परतन्त्रं कीदृक् स्वतन्त्रता ॥ मार्कण्डेयपुराण 125, 29.

316. Aristotle in 'Politics' says 'A state exists for the sake of a good life and not for the sake of life only ... Political society exists for the sake of noble actions and not of mere companionship' (Book III. Chap. 4).



or 'kingdom'. Then it may be of some application to India. It is impossible to define the end of the State in a single word or in a few words. This question about the end of the State has been partly answered already when speaking of the ideals of kingship. At the risk of some repetition a reply to the above question may be given in the following words. The authors on Dharmasāstra had a very low estimate of human nature, they believed that ordinarily men were depraved, that it was difficult to find a man pure by nature and that men were kept in the straight path by the fear of punishment (Mānu VII. 22 = Śānti<sup>216</sup> 15. 34), Yaj. I. 361 requires the king to punish and bring to the proper path castes and guilds when they swerve from their dharma, Kām. (II. 40 and 42-43) says the same thing and adds that in the absence of dauda the world will revert to the state of mātaya-nyāya (the strong devouring the weak), Śakra I. 23 says the same thing. The ancient writers did not rely on the natural moral impulses of man and on his will to do the right thing. The same ideas are expressed by some Western writers on law and politics. 'A herd of wolves is quieter and more at one than so many men, unless they all had one reason in them or have one power over them' says Jeremy Taylor. Salmond (Jurisprudence p. 65) states 'man is by nature a fighting animal and force is the *ultima ratio* not of kings alone but of all mankind'. We must distinguish between immediate or proximate ends and the ultimate end. The ultimate end or goal of most of our philosophy was mokṣa (release or liberation from the ever-recurring cycle of births and deaths and from the miseries and suffering of life). The same was the ultimate goal of rājadharmā. But the proximate goal of the State in India was to create such conditions and

316a. सर्वो दुष्कृतो लोको दुर्लभो हि दुष्चिन्तः । दुष्कृत्य हि मया दुर्लभो भोगादेव मयाते ॥ शांति 15. 34; इदं बहुधा विषयैर्वाक्यं परस्परं खीनतुल्यं जगत् । समाने वर्त्मनि साधुमेवैते पतिते दुष्कृत्योपपत्तिवत् । काम. II. 42; राजदुष्कृत्योपपत्तिवत्, स्वस्वधर्मो भवेत् । शुक I. 23, This conception bears striking resemblance to the words of Machiavelli in 'Discourses' I. 3 quoted by H. Butterfield in 'Statecraft of Machiavelli' (1940) p. 111 'Those who have discussed the problems of civic life demonstrate—and history is full of examples to confirm the fact—that whoever organizes a state and arranges laws for the government of it must presuppose that all men are wicked and that they will not fail to show their natural depravity whenever they have a clear opportunity, though possibly it may be concealed for a while'.

environments as would enable all men to live in peace and happiness, to pursue their avocations, to follow their own customs and usages and their 'svadharma', to enjoy without interference the fruits of their labour and the property acquired by them. The king was the divinely provided instrument to create the conditions of peace, order and happiness. If the king impartially exercises the power of *daṇḍa* over all, whether his own son or enemy, in proportion to their guilt, he secures this world and the next for himself and the people; the king's scrupulous performance of his own duties leads him and his people to heaven. The task of the State (or the king who represented the State) was to repress by the threat and use of force any violation of the rights of personal freedom and property, to enforce the practice of people's own traditional customs and usages and to take serious care of virtues and dharma. These were the sentiments of Kauṭilya himself (III. I.)<sup>316</sup>. At the very threshold of his work he remarks 'therefore the king should not allow people to swerve from or fail in their duties (dharma); for whoever holds fast by his dharma, observes the rules laid down for *śrāgas* and those of castes and āśramas (the stages of life) will be happy in this world and the next. The members of society consisting of four castes and having four āśramas when guarded by the king with *daṇḍa* will abide by their respective paths, being devoted adherents of their respective duties and avocations'.

Both Kam. I. 13 and Śukra I. 67 state<sup>317</sup> that a king following the path of righteousness confers upon himself and his subjects the group of three viz. the three *puruṣārthas* of dharma, artha and kama; if he acts otherwise he certainly ruins (himself and the people). The same doctrine is inculcated by other works, such as Śānti 85. 2, Mārkaṇḍeya 27. 29-30.<sup>318</sup>

316b. राज्ञः स्वधर्मः स्वर्गोयं राजा धर्मेण रक्षितः । ... दुष्टो हि केषलो लोकं परं चेभं च रक्षति ॥ राज्ञा धृष्टे च शत्रौ च यथादोषं क्षमं भूतः ॥ कौटिल्य III. 1; तस्मात्स्वधर्मं भूतानां राजानां न स्पृशित्वायेत् । स्वधर्मं सन्नुधानो हि मेघं चेहं च नन्दति ॥ स्ववस्थितार्थ-मर्थाद्-कृतवर्णोऽयमस्तिथिः । यत्परा हि रक्षितो लोकः मसीदति न सीदति ॥ कौटिल्य I. 3, last two verses; चतुर्वर्णोऽयमो लोको राज्ञा दुष्टेण वाहितः । स्वधर्मकर्माभिरतो वल्ले स्वेदु वर्मसु ॥ कौटिल्य I. 4, last verse.

317. स्वाधर्मद्वयो दृष्टिरात्मानमपि च राजाः । विधर्मोऽप्यतस्तं विद्वन्ति भुवमन्यथा ॥ काम. I. 13 and शुक्र I. 67.

318. वर्णधर्मो न सीदन्ति यस्य राज्ये तदाश्रमः । तस्य तस्य सुखं मेघं परमेष्ठं च ज्ञान्यतम् ॥ मार्कण्डेयपुराण 27. 29.



Therefore what the king was to do was to see that the dharmas of *varna* and *āśrama* were observed by the people and if they swerved from them to bring them back by punishments. Sukra IV. 4, 39 says that each caste was to observe the rules of the caste handed down from generation to generation and that if its members behaved otherwise they were liable to be punished by the king. The principal works emphasize that each individual in the State should fulfil his own duties (*svadharma*) as belonging to a particular class (*varna*) or a particular stage of life (*āśrama*) or his own duties due to the position he occupies and those known as *sāmānya dharma* such as *ahimsā*, truthfulness &c. (for which see H. of Dh. vol. II. pp. 10-11) and that the purpose of the State was to enable him to do so and to prevent others from interfering with him. All this laid undue emphasis on the preservation of the *status quo*, on current beliefs and practices as the ideal. The writers do not emphasize that each individual must actively pursue the good of the society as a whole. As the final goal was *mokṣa*, undue emphasis was laid on other-worldiness, on individual attainment and on detachment and running away from ordinary worldly affairs. The goal of the State was deemed to be to enable men to attain the four *puruṣārthas*, particularly the first three (as the last viz. *mokṣa* depended only upon individual philosophical insight and mystical experience and was attainable only by a microscopic number). Even the Bārhaspatya-sūtra<sup>319</sup> (II. 43) says that the fruit of polity was the attainment of *dharma*, *artha* and *kāma*. Somadeva begins his *Nītivākyaṃṛta* in a characteristic way when he performs obeisance to *rājya* (the State) that yields the three fruits of *dharma*, *artha* and *kāma*.<sup>320</sup> Kām.<sup>321</sup> IV. 77 winds up his discussion of the seven elements of *rājya* with the declaration that the entire State depends for its highest stability on wealth and the army and that the State when handled by a sagacious minister results in securing the three goals. Kautilya<sup>322</sup> (in I. 7) first advises people not to eschew pleasures altogether,

319. नीतिः कले धर्माधिक्यायाविति । धर्मेणार्थकामौ परिरक्षौ । धार्ढ्यस्यैव सुखं II. 43-44.

320. अथ धर्माधिक्यामफलान् राज्यान् नमः । नीतिवार्तायास्तु I. 7.

321. इति एव राज्यं सकलं समीरितं दत्ता प्रतिष्ठारथं धनं सत्पादनम् । दृष्टीलेनेति-  
युगेन मन्त्रिणा विचर्यमिष्यतिमुपैति शास्त्रदीप्तम् । काम. IV. 77.

322. धर्माधिक्यविरोधेन कामं सेवेत । न किं दुस्तः स्वस्य । तमे वा विचर्यमप्यथोदास्यवन्म ।  
एको ह्यप्यथोदास्यो धर्माधिक्यामात्मानामानमिहसौ च पीडयति । अथ एव प्रदानं इति कौटिल्यः,  
अथैवमूलं हि धर्मकामाविति । कौटिल्य I. 7.

but to enjoy pleasures in such a way as not to conflict with the requirements of dharma and artha, and adds that a man may enjoy in an equal degree the three goals of life that are dependent on each other, since any one of the three if pursued to excess harms not only the other two but also itself. The Dharmaśāstra authors held that Dharma was the supreme power in the State and was above the king, who was only the instrument to realize the goal of dharma. To these authors the State was not an end in itself but only a means to an end. Kautilya, true to his position as a writer on arthaśāstra, finally states his opinion that *artha* is the chief among the three goals, as the other two depend upon wealth for their realization. With this statement of Kautilya, one of the most renowned figures of Indian antiquity, this section on rajadharma may be appropriately brought to a close.



## VYAVAHĀRA

### (LAW AND ADMINISTRATION OF JUSTICE)

#### CHAPTER XI

That to administer justice impartially and to punish the guilty were among the prime functions of the sovereign has been stated above (p. 57). The king was deemed to be the fountain (i.e. the distributor) of justice. Kaṭilya<sup>223</sup> (I. 19) prescribes that the king was to look into the disputes of citizens and country people in the 2nd part of the day (divided into eight parts). Manu (VIII. 1-3) states that the king desirous of looking into the disputes of people should enter the *sabhā* (the hall of justice) accompanied by brāhmaṇas, ministers and should there decide every day the causes of litigants. Śukra IV. 5-45 is the same as Manu VIII. 1, Vas. 16-2, Śaṅkha-Likhita, Yaj. I. 327 and II. 1, Viṣṇu Dh. S. III. 72, Nār. (I. 2), Śukra IV. 5-5, Mānasollāsa II. 20, verse 1243 state that the administration of justice was the personal concern of the king. The Mit. on Yaj. II. 1 says that protecting the subjects is the highest duty of a king and that that duty cannot be discharged without eradicating and punishing the wicked, which latter requires that the king should administer justice (*vyavahāradarsana*). Medhātithi on Manu VIII. 1 also says that protection consists in the removal of troubles, secular and spiritual (*adṛṣṭa*). Manu VIII. 12 and 14 (= Nār. III. 8-9 p. 42) personifies the administration of justice as Dharma incarnate by representing that when justice is administered the dart of adharma or falsehood by which dharma is pierced is taken out from the body of Dharma. Yaj. (I. 359-360) declares that the impartial administration of justice yields the same rewards as solemn vedic sacrifices do. In this way administration of justice was held to be a very sacred duty. Manu VIII. 128 (= Vṛddha-Hārita VII. 194) declares that a king who punishes those that do not deserve to be punished and who does not punish those that deserve punishment incurs great obloquy and goes to hell. Vas. (19.40-43) prescribes one day's fast for the king and three days' fast for the *purohita* when the king lets off those that deserve punishment and three days' fast for the king and the *kṛcchra* penance for the *purohita* when the king

223. द्वितीये वीरजायद्वानो कार्पाणि पश्येत् । कौ. I. 19.

punishes the innocent. The Mahābhārata<sup>321</sup> (Anuśāsana 6-38 and chap. 70) and Rāmāyaṇa say that if a king intent on pleasures does not show himself to litigants who approach him for decision, he would suffer like king Nṛga. The Śukraṇṭisāra (IV. 5-8) also says the same thing. In the Rāmāyaṇa (VII. 53-54) king Nṛga is said to have been cursed to become a chameleon for a long period by two brāhmaṇas who had a dispute about the ownership of a cow and could not see the king for many days. Megasthenes (Frag. XXVII. pp. 70-71) says 'the king remains the whole day in court without allowing the business to be interrupted.' Kaut.<sup>322</sup> (I. 19) gives the advice that, when in court, the king should not cause petitioners or litigants to wait long at the door, for when a king makes himself inaccessible, those who are near him create confusion about what should or should not be done, whereby the king engenders disaffection among his subjects and makes himself a prey to his foes. The king's court<sup>323</sup> of justice was called *dharmasāhāna* (Śankha-Likhita), *dharmāsana* (Nārada I. 34, Manu VIII. 23, Śukra IV. 5-46) or *dharmādīkaraṇa* (Kātyāyana and Śukra IV. 5-44): 'The place where the decision of the truth of the plaint (lit. the cause or root of dispute) is carried on by a consideration of the rules of the sacred law is called the *dharmādīkaraṇa* (the Hall of Justice)'—says Kātyāyana. Kālidāsa (Śakuntala V) and Bhavabhūti (Uttararāmacarita I.) employ the word *dharmāsana*.

The authors of smṛtis believed that there was a golden age or era of perfect virtue in the dim past, when men were bent only on right conduct, that later ages saw the advent of sinful

324. अधिनामुपसज्जानां वस्तु नोपैति दर्शनम् । सुखे यत्नको ह्यतिः स तत्प्रेतं युगे  
वधा ॥ महामातृ quoted by इन्द्रविक्र प. 13; अधिनां कार्वाणसिद्धयर्थं परमात्तं नैपि  
दर्शनम् ॥ अथवाः सर्वभूतानां कुकलासो भविष्यति । ... कार्वाणानां विमर्शो हि राज्ञां  
वैषम्यं कल्पते । रामायण, उत्तरकाण्ड 53. 18, 19, 23; पौरकावर्णिगो यो राजा न करोति  
सुखे निवसः । स्वर्गो न परको योरे वचने नात्र संशयः ॥ शुक IV. 5. 3; vide उत्तरकाण्ड  
53. 6 for very similar words; शङ्खलिकितो । राजा स्वाधीनहृत्तिरात्मप्रवपकोऽः  
स्वयं कृत्यानुदर्शो विमर्शनिवृत्तिरिह भद्राणि पश्यति । राजनीतिय. प. 134.

325. उपस्थानगतः कार्वाणसिद्धयर्थं कारयेत् । दुर्दर्शो हि राजा कार्वाणार्थ-  
विपर्ययमाप्तकोः कार्यते । तेन गृहलोकोपमरिचो वा गच्छेत् । अर्थशास्त्र 1. 19.

326. धर्मस्थानं यावत् दिशि तन्वाग्नुद्वैः समवेतं स्यात् । शङ्ख q. in स्तुतिच.  
(II. p. 19); धर्मशास्त्रविचारेण मूलसारविषयम् । पञ्चाधिक्रियते स्वाने धर्माधिकरणं  
हि तत् कारणा- q. in स्तुतिच. (II, p. 19). परा. मा. III. 1 p. 22. The sp. m. p. 8  
reads धर्मशास्त्रावसारेण अर्थशास्त्रविषयम्. The verse as thus read is the same as  
Śukra IV. 5. 44. Vide स. वि. p. 63 'यत्र स्थाने आर्षेद्विगप्यतस्त्वनिर्गर्ह्यः धर्मशास्त्र-  
विचारेण निर्जेतुभिः क्रियते इति धर्मस्थानम् । अथैव धर्माधिकरणमिति नामान्तरम् ।'



promptings, that therefore regulation of life by the learned and the king came into vogue (compare Gaut. VIII. 1). Manus I. 81-82 (= Śāntiparva 231. 23-24) state that in the Kṛta age dharma prevailed in its perfection, there was no advent of adharma among men then and that in each of the three succeeding *yugas* dharma declined progressively by the introduction of theft, falsehood and deceit. The Śāntiparva (59. 13 ff) narrates that in the Kṛta age there was no king and no punishment, that gradually kāma (lust) and rāga (passion) began to wield away and dharma dwindled away. This belief in an ideal or perfect past was universal and was probably depicted in order to induce men to rise higher and higher in goodness and virtue and to make them submit easily to the discipline of government and the priestly requirements. This ideal description of the past is often found associated with the picture of anarchy that reigned in the dim past which was retrieved from horrors by the creation of the kingly office (vide pp. 30-34 above). These diametrically opposite views of the past contained in the same works (such as Manus and the Mahābhārata) probably owe their origin to the desire of the writers to make the common people submit to the absolute rule of kings. Almost all works even from the Rgveda (X. 10. 10) downwards believe in the progressive deterioration of religion and morals. A state of anarchy is visualised in a few works only for the purpose of glorifying the great usefulness of the institution of kingship. Nār. I. 1 states<sup>327</sup> 'when people were solely bent on dharma and were truthful, there existed neither administration of law and justice nor hatred nor jealousy. When dharma declined (or disappeared) among men, administration of law and justice came to be introduced and the king was declared to be the decider of disputes and the chastiser (of the guilty)'. Br. also (S. B. E. 33 p. 277) says 'In bygone ages men were pre-eminently virtuous and free from cruel tendencies; now that men are overwhelmed by greed and hatred, judicial procedure has to be declared'.

The idea of Dharma took the place of the very ancient conception of *ṛta*. In the Rgveda *ṛta* denotes the supreme

327. धर्मकालाः कृता यदात्मन्तवदादिनः । तदा न व्यवहारोऽयं द्वेषो नापि मत्सरः । न ह्येवमनुष्याणां व्यवहारः पश्यते । इहा च व्यवहारानां राजा कुम्भधरः स्यात् । नारद I. 1-2; धर्मप्रधानाः कृता पूर्वमममर्षितकान् । ततोऽप्येवमनुष्याणां व्यवहारः प्रसीतितः । बृह. IV. 4. 22 p. 1, अथ. IV. 4. 22 p. 4. Compare Plato in 'Laws' (Book IV p. 433 of the Random House edition) 'There is a tradition of the happy life of mankind in days when all things were spontaneous and abundant'.

transcendental law or the cosmic order by which the universe and even the gods are governed and which is intimately connected with sacrifice. Vide Rg. I. 68. 2, I. 105. 12, I. 136. 2, I. 142. 7, I. 164. 11, II. 28. 4, IV. 23. 8-10 ( in which the word *ṛta* occurs ten times ), X. 190. 1. On the relation of *ṛta* and law Berolzheimer in his 'The world's legal philosophies' ( translated by Jastrow, New York, 1929 ) says: " closely connected with the religious and philosophical views of the Aryans are certain fundamental positions in regard to the philosophy of law which in turn became the antecedents of later legal and ethical developments among the Greeks and Romans. Foremost among these philosophical conceptions is '*ṛta*', which is at once the organized principle of the universe and the divine ordering of earthly life; as the former it regulates the appearance of the sun and the moon, of day and night and embodies the unchangeable principle that pervades the succession of phenomena; as the latter it is affiliated with purpose and human benefit and is exemplified in the flow of the rivers which fertilize the fields; in the cattle useful to men; in the institutions of marriage, of the monarchical state, of the patriarchal home; and in man's sense of responsibility for his sins. The derivative conceptions of '*vrata*', '*dharma*', '*dharma*', '*svadharma*' represent special aspects of '*ṛta*'; thus '*vrata*' refers to any specialized embodied '*ṛta*'; while '*dharma*' refers specifically to the moral function of rewarding good and punishing evil " ( pp. 37-38 ). Vide Prof. V. M. Apte's paper on '*Rta*' in the Rgveda ( pp. 55-60 of the Silver Jubilee Volume of the Annals of the B. O. R. Institute ) in which he tries to prove that *ṛta* means primarily ' the belt of the Zodiac '.

The word *vyavahāra* is used in several senses in the *sūtras* and *śaṅkṣas*. One meaning of *vyavahāra* is ' transaction or dealing ' as in Udyogaparva 37. 30 quoted above ( on p. 207 ) or in Āp. Dh. S. II. 7-16-17, I. 6-20. 11 and 16. It also means ' a dispute, a lawsuit ' in Śānti 69-28, Manu VIII. 1., Vaa. 16-1, Yaj. II. 1., Viṣṇu Dh. S. III. 72, Nār. I. 1 and 2, Śukra IV. 5-5. A third sense is ' legal capacity to enter into transactions ' ( as in Gaut. X. 48,



Vas. 15-8, Śaṅkha-Likhita (*rakṣat rājā bālānām dhanānyaprāpti-vyavahārāpām* &c. quoted in V. R. p. 599). A fourth but a rare sense is 'the means of deciding a matter' (as in Gaut. XI. 19 'tasya vyavahāro vedo-dharmasāstrāpyaṅgāni &c.). In this chapter the word vyavahāra is taken to mean 'law-suit or dispute in a court' and 'legal procedure'. This sense is very ancient. In the Delhi-Topra Pillar Edict No. 1 of Aśoka (Corpus I. I. vol. I. p. 123) we have the word 'viyohālasamatā' (vyavahārasamatā) and the word 'vyavahāraviddhi' occurs in Khuravela's Hāthigumpha Inscription (E. I. vol. XX. p. 79). A 'vohārika-mahāmatta' (vyāvahārika-mahāmātra, minister of justice) occurs in the Mahāvagga, I. 40, 3 and Chullavagga VI. 4-9). In the medieval digests, both law and procedure are sometimes dealt with in one book as in the Vyavahāra-nirṇaya of Varadarāja and the Vyavahāra-mayūkha; sometimes the titles of law are treated of in one work and judicial procedure in another. For example, Candēśvara composed the Vivādaratnākara (on titles of law) and Vyavahāraratnākara (on judicial procedure). The word vyavahāra is restricted in some works to judicial procedure alone (as in the Vyavahāramātrikā of Jimūtavāhana and the Vyavahāratattva of Raghunandana). The word *viśāda* which means 'dispute' is often used as a synonym for vyavahāra in the sense of law-suit or legal procedure or both. In Āp. Dh. S. II. 11-29-5 and in Nār. I. 5 *viśāda* means 'law-suit'. In the Vivādacandra of Misarumisra and the Vivādatāṇḍava of Kamalākara both law and judicial procedure are treated of. Ysī. (II. 8 and 305) appears to distinguish between *viśāda* (law-suit) and *vyavahāra* (judicial procedure).

The word 'vyavahāra' is defined by several smṛtis and commentators. Kātyāyana gives two definitions, one based on etymology and referring principally to procedure and the other giving the conventional sense having in view a dispute. "The (*upasarjā*) is employed in the sense of 'various', 'an' in the sense of 'doubt', 'hāra' means 'removing'; *vyavahāra* is so called because of its removing various doubts" (quoted by V. M.

p. 383, Par. M. III. p. 7 and Kullūka on Manu VIII. 1).<sup>327a</sup> This definition places the administration of justice on a high plane. The purpose of all branches of Indian philosophy is the quest of Truth or Reality. The purpose of legal procedure is, according to Kāt., the same viz. to find out the truth when there is a dispute. But there are some points of difference. The philosopher may take his own time in his search for truth; but justice has to be done as quickly as possible. Further, legal procedure has its own method and limitations in finding out the truth, that is, it depends on oral and documentary evidence, while a philosopher's quest of truth may be purely intellectual and subjective. Another definition is: 'When the ramifications of right conduct, that are together called dharma and that can be established with efforts (of various kinds such as truthful speech &c.), have been violated, the dispute (in a court between parties) which springs from what is sought to be proved (such as a debt), is said to be *vyavahāra*'. Hārta gives an easier definition: 'that is declared to be *vyavahāra* where the attainment of one's wealth (taken away by another) and the avoidance of the dharmas of others (such as those of heretics) are secured with (the help of) the means of proof' (quoted by the Śm. C. II. p. 1). The Mit. (on Yāj. II. 1) defines *vyavahāra* as 'avermment (about a matter) as related to oneself in opposition to another'. Śukra IV. 5. 4 gives another definition. The *Vyavahāramayūkha* gives a much

327 a. वि नानार्थेऽथ सन्देहे इत्थं वा उच्यते । नानासन्देहहरणार्थं व्यवहार इति स्मृतः ॥ कात्यायनः quoted in अथ. मा. p. 233, कुल्लूक on मनु VIII. 1, दीनकलिका p. 36, which says 'क्षणदानदिनानातितादृशविषयः निराक्षिप्यतेऽनेनेति नानासंज्ञपकारी विचारः व्यवहारः' । अथानसाधये विच्छिन्ने धर्मोक्तये स्वापवित्तरे । साध्यमूलस्तु यो वादो व्यवहारः स उच्यते ॥ अथार्क. p. 596, स्मृतिस. (II. p. 1), अथ. मा. III. pp. 3-7, अथ. म. pp. 3-4. This last verse is variously explained. Vide my notes to Kāt. 25. The मदनमाला (अथ. Ms. in my possession) explains 'अथानसाधये कष्टसाधये पृथगेवाधिके विषये विच्छिन्ने स्वेच्छया भोक्तृमहाकये मति स्वापवित्तरे स्वापः धर्मात् विस्तीर्णते अथ उच्यते निर्णीयते धर्मिसंस्तर्पित्व धर्मोक्तये धर्मनानाके पक्षाधिकरणमिति पक्षिणे समालोचने स्थले साध्यमूलको यो पृथगेवादिविषयो वादः स व्यवहार इति' । स्वधर्मस्य वधा प्राप्तिः परधर्मस्य वर्जनात् । स्वापेन वध क्रियते व्यवहारः स उच्यते ॥ इति q. by स्मृतिस. (II. p. 1).



more elaborate definition ( vide text p. 1 and notes pp. 3-4 of my ed. ).

A *vyavahārapada*<sup>328</sup> means 'the topic or subject matter of litigation or dispute'. It is the same thing as 'vivādapada' which word occurs also in Kaut. (III. 16 p. 191 and IV. 7 p. 218) and in Nār. (dattāpradānika 1, abhyupetyāśuśrūṣā 1). Manu VIII. 8 shows that '*pada*' means '*sthāna*'. Yāj. II. 5 defines it as 'If a person, who is set at naught by others in a manner that is opposed to the rules of *smṛti* and to good usage or conventions, informs the king (or his judge), that is a *vyavahārapada*'. From very ancient times eighteen *vyavahārapadas* have been enumerated. The underlying idea is that most of the disputes between men can be classified under 18 heads. Even Manu ( VIII. 8 ) was conscious of the fact that the enumeration of 18 *vyavahārapadas* was a matter of a convenient arrangement and that the number 18 did not embrace all disputes whatever but only the largest number of disputes and the most important among them. Medhātithi and Kullūka make this position quite clear.<sup>329</sup>

There is some difference about the number and nomenclature of the *vyavahārapadas* among Manu and other writers of *smṛti*s. The following table will give some idea of the divergence as to nomenclature and the sequence in which they are treated of. All do not mention them in the same order as in Manu VIII. 4-7. For example, the order in Yāj. is *ṛnādāna*, *upanidhi*, *dāyavibhāga*, *sīmā-vivāda*, *svāmipālavivāda*, *asvāmī-vikraya* &c. Yāj. does not enumerate all of them in one place as Manu and Nārada do.

328. व्यवहारः तस्य पदं विषयः । मिता. on वा. II. 6 ; पदं स्थानं निमित्तमिति याज्ञव. । अथार्थः on the same.

329. दृष्टिग्रहणं मायापक्षपातकार्यम् । अन्वेऽपि व्यवहारहेतवः सन्ति यथा मित्र-सन्तर्पणं स्वपात्रे वेदनं दत्तं वज्रं किमिषयावर्तयत्सरादुत्पत्तये ददातीति न वेदं दत्तात्मकं न ह्यत्र स्वस्वनिवृत्तिरिति भोगाद्युपभोगं वस्तुतः । मिता. on मनु VIII. 8 ; दृष्टिग्रहणं वेदान्तरा-श्रमसि विवादनदाने सन्तीति सूचयति । तानि च स्वीर्णकसम्बन्धेन नारदाद्युक्तानि । कुल्लूक on the same.

MANU	KAUTILYA	YAJÑAVALKYA (acc. to Mfl.)	NĪRADA	BRHASPATI (in Sm. C. II. p. 9)
1 roḍāna	5 roḍāna	1 roḍāna	1 roḍāna	1 kuṣṭha
2 nikṣepa	6 upanidhi	2 upanidhi	2 nikṣepa	2 nidhi
3 asvāmivikraya	11 asvāmivikraya	6 asvāmivikraya	7 asvāmivikraya	8 asvāmivikraya
4 sambhūya-samut- thāna	8 sambhūya-samut- thāna	17 sambhūya-samut- thāna	3 sambhūyasamut- thāna	4 sambhūyotthāna
5 dattaśyānapākarma	10 dattaśyānapākarma	7 dattaśyānapākarma	4 dattaśyānapākarma	3 adeśya
6 votanāḍāna	(In III. 13 bare mention)	11 votanāḍāna	6 votanāśyānapā- karma	5 bhṛtyaḍāna
7 sarividyatyatikrama	7 karmakarakaḷpa	10 sarividyatyatikrama	10 samayasyānapā- karma	10 samayatikrama
8 krayavikrayānśaya	4 samayasyānapā- karma	8 kṛtānśaya	9 kṛtānśaya	9 krayavikrayān- śaya
	9 vikṛtyasampra- dāna	16 vikṛtyasampra- dāna	8 vikṛtyasam- pradāna	0
9 svāmpālaviṇḍa	0	5 svāmpālaviṇḍa	0	7 bhūvāda
10 śmāvivāda	3 śmāvivāda	4 śmāvivāda	11 kṣetrajavivāda	15 vākparusya
11 vākparusya	13 vākparusya	13 vākparusya	15 vākparusya	16 dandapārūṣya
12 dandapārūṣya	14 dandapārūṣya	14 dandapārūṣya	16 dandapārūṣya	12 śṭeṣya
13 śṭeṣya	14 dandapārūṣya	18 śṭeṣya	0	17 vadina
14 śāhasa	12 śāhasa	15 śāhasa	14 śāhasa	18 śṛtsaṅgraha
15 śṛtsaṅgrahāra	saṅgrahāna (IV. 12)	19 śṛtsaṅgrahāna	0	11 śṛtipumsayoga
16 śṛpundharmā	1 (no name but subject dealt with in III. 2-4)	0	12 śṛtipumsayoga	13 dayabhāga
17 vibhāga	2 dayavibhāga	3 dayavibhāga	13 dayabhāga	14 akṣadāvana
18 dyūtasamābhvaya	15 dyūtasamābhvaya	12 dyūtasamābhvaya	17 dyūtasamābhvaya	6 asuśṛṅga
0	0	9 abhyupekṣasūśṛṅga	5 abhyupekṣasūśṛṅga	19 prakṛtṛpa
0	10 prakṛtṛpa	20 prakṛtṛpa	18 prakṛtṛpa	



It will be noticed that Yaj. omits the duties of husband and wife from the 18 topics of vyavahāra as he had already dealt with them in his section on *ācāra*, adds *abhyupetyāśuśrūṣā* and *prakīrṇaka* (miscellaneous wrongs) and splits *krayavikrayānuśaya* into two and thus gives 20 topics. Nārada (I. 16-19) has the same 15 topics as those of Manu (in some cases under slightly different names), omits *svāmīpālavivāda*, *steya* and *strisaṅgrahana*, adds *abhyupetyāśuśrūṣā* and another topic viz. *prakīrṇaka* and splits *krayavikrayānuśaya* into two, viz. *krīṭānuśaya* and *vikrīṭānuśaya*. He includes *steya* under *sāhasa* (sāhasa-verse 31) and also in what is an appendix. Bṛhaspati as quoted in the Smṛti-candrikā (vyavahāra p. 9) names the 18 vyavahārapadas and adds *prakīrṇaka*. Kautliya also adds *prakīrṇaka* and omits 'steya' under his dharmasthiya section, though he deals with theft elsewhere (as in IV. 8 and 11). It is not to be supposed that the 18 topics were first started by the Manusmṛti. Gaut. XII. 1 mentions *vākpārūṣya* and *daṇḍapārūṣya*, treats of some of the topics without specifying the technical names e. g. he refers to the subjects of *saṅgrahana* (in XII. 2-3), of theft (XII. 12-13), of *svāmīpālavivāda* (in XII. 16 ff.), of *ṛnadhāna* (in XII. 26-33), of *nidhi* (in XII. 39), of *dāyavibhāga* (in XXVIII). Similarly the Āp. Dh. S. speaks in scattered places of some of the topics of vyavahāra such as murder (i. e. *sāhasa*) in I. 9. 24, of adultery in I. 9. 25. 1-2 and I. 10. 28. 15-20, II. 10. 26. 18 ff., theft in I. 9. 25. 4-11, *dāyavibhāga* in II. 6. 14, *vākpārūṣya* in II. 10. 27. 14. Vas. also mentions the word *dāyavibhāga* (in XVII. 40) and sets out rules about it and about means of proof (XVI. 13-15), about *ṛnadhāna* (XVI. 31), about the twelve kinds of sons (XVII. 12-39). The Baud. Dh. S. (II. 2. 8) employs the word *dāyavibhāga* and gives several rules on that subject. Thus some at least out of the eighteen vyavahārapadas (such as *vākpārūṣya*, *daṇḍapārūṣya*, *dāyavibhāga*, *steya*) were distinctly recognized centuries before the present Manusmṛti was composed. Someśvara in *Mānasollāsa* (II. 20. verses 1265-1273) enumerates 22 vyavahārapadas, by splitting *dattasāyānpākarma* into two as *datta* and *dattāpāhāraka*, adds *svāmībhṛtyavivāda* after *svāmīpālavivāda*, counts *krayavikrayānuśaya* as two and *dyūta-samśhvaya* as two distinct topics.

The definition of *vyavahārapada* in Yaj. II. 5 (= Śukra IV. 5. 68) viz. 'if a person informs or complains to the king' (*āvedayati ced rājā*) conveys that vyavahārapada means and includes only those disputes that are started or brought before

the Court at the instance of the parties. Manu VIII. 43 prescribes that neither the king nor his officers should start a dispute (i. e. a legal proceeding), nor should he sit silent upon (hush up) a matter which has been brought before him by another (i. e. by a party). Gaut. XIII. 27 lays down that a party should humbly approach a judge with his complaint. Kātyāyana (27) states: 'The king<sup>330</sup> should not, through influence or through greed of money, take upon himself the disputes of men, when they do not themselves want to contend (in a court)'. Mānasollāsa II. 20 verse 1274 and Sukra IV. 5. 69 say the same. There must have always been several matters, of which nobody might complain and which the king might have to look into *suo motu*. Manu after dealing with the 18 vyavahārapadas (in VIII. 1 to IX. 251) requires the king (in IX. 252-253) to make efforts to destroy kankakas (thorns, harmful persons) and dilates upon many aspects of his activities in this respect. Nārada relegates all matters in which the king took action *suo motu* to a separate topic, prakīrṇaka, about which he says 'under prakīrṇaka are comprised lawsuits depending on the king (i. e. on the king's own action) such as transgressions of the king's commandments and obedience to his injunctions, grants of towns, dissensions among the constituent elements (such as ministers) of the State, the duties and breaches thereof among heretics, followers of the veda, corporations (of merchants) and groups, dispute between father and son, neglect of prescribed penances, abstraction of gifts made to worthy persons, the wrath of hermits, sinful confusion of castes and the rules regarding their maintenance and (in short) whatever (matter) has been omitted in the preceding (vyavahārapadas)—these are treated under prakīrṇaka'.<sup>331</sup> Brhaspati defines prakīrṇaka in

330. न राजा नु बलित्वेन बललोभेन वा पुनः । स्वयं कार्यानि कुर्वीत वरानामविवादित्वात् ॥ कात्यायन प. by कुट्टशुक on मनु VIII. 43, व. मा. p. 285 (which reads न वानमविवादित्वात्), स्वयं नीत्यादुपेकार्थं समर्थः पृथिवीपतिः । नावृत्ति इत्येकोत्तेनैव दर्श कार्यविना सुपः ॥ मानसोल्लास II. 20. 1274.

331. श्रीमार्कंडेयपुराणे पञ्चदशस्कन्धे कृपाध्यायः । राजामाज्ञासमीपाहृतत्वं कर्तव्यं तथा ॥ पुरमहर्षेण संनिधुः प्रकृतैर्ना तत्रैव च । पाशान्निगमभोजीनयामर्गविपर्ययः । पितापुत्रविवादश्च मापश्चित्तप्रातिक्रमः । मल्लिहविर्लोपश्च कोपश्चाभगिनामपि । वर्णसङ्घर्षदीक्षश्च बहुजनमित्यमरुता । न ह्येवं नञ् पूर्वेषु सर्वे तत्प्रधानकीर्णकम् ॥ नारद (श्रीमार्कंडेय 1-4) quoted by the मित्रा on वा. II. 295. The स्मृतिचन्द्र (II. p. 331) reads पुरमार्ण add explanation पौलस्तिलेकचम्पानम्. अत्र बृहस्पतिः । एव पाण्डिकृतः श्रीमार्कंडेयस्कन्धः समाप्तः । कृपाध्यायं प्रवक्ष्यामि पञ्चदशस्कन्धे श्रीमार्कंडेयः स्मृतिचन्द्रः II. p. 331.



the same way as Nārada. Kautilya deals with the vyavahārapadas in his Dharmasthīya (III) section and in the Kāṭakaśodhana section (IV) speaks of matters that are similarly dealt with by officers called *pradeśṭās* (who correspond to coroners and police magistrates of modern times), while matters falling under the dharmasthīya section (viz. the vyavahārapadas) were disposed off by judges (called *dharmasthas*). Kāṭaka means in Kautilya as in Manu IX. 252 'harmful persons'. The chief matters that fell within the purview of the kāṭakaśodhana (removal or punishment of harmful persons) officers or courts were: Artisans like blacksmiths and carpenters were generally to work in guilds and receive from people materials for working them up; if they caused unreasonable delay in handing back finished articles, they were to receive one-fourth less than the proper wages and were to be fined twice the amount of wages; similar provisions are made for loss of wages and fines for weavers who do not increase the weight of cloth (cotton, linen, silk or woollen) woven up to the usual standard: washermen were to wash clothes on wooden planks or smooth stones, but if they washed them elsewhere, they were to pay compensation for loss caused and a fine of 6 *paṇas*; they were to be fined twelve *paṇas* for the sale, pledge or hiring out of other's clothes; they were also to be fined for keeping clothes with them beyond the time ordinarily required; for washing the best garments, garments of middling quality and inferior garments the wages were respectively one *paṇa*,  $\frac{1}{2}$  and  $\frac{1}{3}$ ; trustworthy persons and experts were to decide disputes about colour and wages; similar rules apply to tailors; goldsmiths, who

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(Continued from the last page)

In an interesting paper contributed to the Sir Denison Ross volume of papers pp. 234-240 Dr. V. Raghavan describes a work called 'Vaiśyavarnā-mdhākara' composed by Kollācala Mallinātha, the renowned commentator of the five classical Sanskrit Kāvya. This work is the report or decision given by a commission presided over by Mallinātha appointed to settle a dispute (which in these days might be called a caste question not cognisable by civil courts) that arose in the times of Devaśyā II. of Vidyānagara (1422-1466 A. D.). Vaiśyas were given a license to trade in the 24 cities and 108 shrines of the realm; certain subcastes like the Komaṭis claimed to be vaiśyas and this privilege also. Mallinātha decides after a searching examination of authorities that the words vaiśya, vāṅk, vāgara, kṛoja, tṛtīya-jātiya are synonyms, that Komaṭis, who were styled vijāṭis by their rivals, were vaiśyas and entitled to all the privileges of vaiśyas. This decision would come under either वाचस्पि ... निर्वचन; or तद्वचननिश्चय.

without informing (government officers) purchased from unclean hands (i. e. from menial servants or slaves) without changing the form of the article or after changing the form, or purchased from a thief were to be fined respectively 12, 24 or 48 paṇas; for stealing one (gold) māśaka (one-sixteenth of a suvarṇa) from off a suvarṇa, the gold-smith was to be fined two hundred paṇas and for stealing one māśaka out of a silver dharaṇa there was a fine of twelve paṇas; fines are provided for loss of weight (beyond the recognised standard) in the case of working up copper, lead, brass, bell-metal, tin into vessels and articles; for manufacturing a counterfeit coin, for accepting it or passing it off to another the fine was a thousand paṇas and for entering a counterfeit coin in the royal treasury the punishment was death; a physician, who undertook the medical treatment of a patient without informing (government officers) of the dangerous nature of the disease, was to be punished with the first amercement if the patient died and with the middling fine if the patient died through the carelessness of the physician and if the patient suffered some vital injury, the matter was to be dealt with as assault (*dandapāruṣya*); musicians and actors shall stay in one place during the rainy season and shall avoid taking excessive gifts or indulging in excessive praise of one patron; for violating this rule the fine was twelve paṇas. The same rules apply to those who show dumb plays and to other mendicants, the latter receiving as many lashes as the fine imposed in similar cases on others. In IV. 2 Kautīliya prescribes fines against merchants that use false measures, weights and balances; that sell timber, iron, jewels, ropes, clothes misrepresenting them as superior when they are inferior; that conspire to prevent the sale of merchandise; that cause adulteration of grains, oils, salt, medicines &c.; that raise the prices beyond those fixed by the superintendent of commerce for local commodities and for foreign produce. In IV. 3 Kaut. provides for measures against such calamities as fire, floods, pestilential diseases, famine, rats, tigers, serpents and prescribes a fine of twelve paṇas for catching or injuring cats and mongooses employed to destroy rats. In IV. 4 Kaut. prescribes the measures that the officer called *saṁhartaḥ* has to take to protect the subjects against those who prey upon the people secretly by employing foul means. He has to employ spies under various disguises to find out the honesty or corruption of officers in the villages, of superintendents, of judges, of magistrates and witnesses and the punishment in these cases is generally



banishment. Kauṭilya IV. 5 deals with the detection of young men inclined to robbery and adultery by the employment of spies and agents *provocateurs* in the guise of ascetics and persons reputed to possess miraculous powers. The Kauṭilya IV. 6 and 7 respectively describe the seizure of criminals on suspicion or in the very act itself and examination in cases of sudden death. Kauṭ. IV. 8 speaks of questioning in the presence of the wronged party of the witnesses of the accused, whether they are his relatives or total strangers, as regards the country, the caste, the family, the name, occupation, property, friends and residence of the accused and of the application of torture to the accused to elicit an admission of guilt. It is said that torture is to be applied only in the case of those whose guilt is believed to be established *prima facie* (*āptadoṣam karma kārayet*), that torture is not to be employed when the accused is guilty of a minor offence, is under age, old or diseased, is under the influence of intoxicants, or is a lunatic, or is overwhelmed by hunger or thirst or fatigue due to a journey, or has eaten to excess or is suffering from indigestion or is weak, nor is it to be employed in the case of a pregnant woman or a woman who was delivered of a child within a month; and in the case of other women only half the torture prescribed for males or only the asking of questions is to be employed. Learned brāhmanas and ascetics (when accused) are to be subjected to espionage only. Those who violate these rules or incite others to do so and those who are guilty of causing the death of an accused by torture are to be punished with the highest amercement. Four kinds of torture were employed in the case of complaints about wrongs viz. six *daṇḍas*, seven whippings, two kinds of suspension, and (fourthly) water-tube (i. e. injecting salt water in the nose from a tube).<sup>332</sup> In this chapter Kauṭ. states that one who

332. The exact meaning of the four kinds of torture is not clear. Prof. V. R. Dikshitar in 'Hindu Administrative Institutions' pp. 237-247 tries very hard to establish that Kauṭ. recommends no torture in any case, that '*vākyaṇuroga*' means 'pronouncing of guilt by the jury' and '*karmānu-roga*' means 'judgment of the Chief Justice'. Though the learned Professor's attempt to exculpate Kauṭilya may be due to laudable motives, the words of Kauṭilya are too clear to admit of any other interpretation than the one given above. If one dispassionately considers the fact that no *karma* was allowed to be employed in the case of the weak, the diseased, old men &c., that in the case of women '*ardhakarma*' alone was allowed, that a heavy fine was imposed for causing death by *karma* (*karmāṇa vyūḍḍantaṃ*).

charges an innocent man with being a thief or who conceals a thief is to be punished like a thief and that even one who is not a thief may for fear of torture admit that he is a thief, as Māṇḍavya did. Kauṭ. in IV. 9 prescribes that the *śamāharta* and *pradeśtra* should exercise control over all superintendents of the various State departments and their subordinates, that those who steal or seize valuable articles or jewels from State mines or manufactories should be simply sentenced to death, prescribes various fines and punishments for stealing or removing by force articles of different prices from the State granaries and store-houses, provides punishment for judges that threaten, browbeat, send out or unjustly silence or abuse litigants or that do not ask proper questions or ask improper questions, that cause unnecessary delay, unjustly rehear causes that have been heard or disposed of, and provides heavy punish-

(Continued from the last page)

that Māṇḍavya, though really not a thief, declared that he was so through the fear of the torments of *karma* (*karmakleśabhaya*), that in the four *karmas* we find suspension and water-tube and that immediately after the words '*karma kṛāyati*' we get the rule that in all crimes the brāhmaṇa was not to be subjected to bodily pain, it will have to be admitted that '*karma*' in this chapter of the *Arthaśāstra* means 'torture'. One fails to see what '*ardhakarma*' in the case of women will mean if '*karma*' signifies only the judgment of the chief justice or why Māṇḍavya should have confessed their through fear of '*karmakleśa*'. And one need not feel apologetic if Kautilya recommends torture in certain well-defined cases. Torture was an essential part in the Roman Criminal Procedure and Augustus had issued an edict about it. Vide Stephens' 'History of English Criminal Law' vol. 1, pp. 47-49. Torture by the police and third-degree methods are not unknown in the 20th century in the West (even apart from the latest German methods) or in India, though they are not expressly mentioned in any text-book or Act as allowable. Vide Harry E. Barnes' 'Story of Punishment' pp. 10-15 for various kinds of tortures employed in the West for several centuries and third-degree methods (pp. 15-24), which he asserts are even now in almost universal use by the Police Department in the U. S. A. The story of Māṇḍavya who though not a thief was held to be a thief, because he, owing to his vow of silence, did not reply when questioned and near whom was found the booty stolen and who was impaled, is found in *Ādi.* 63, 92-93 (cr. ed. chap. 37), *Ādi.* 107-108 (cr. ed. chap. 101), *Anuśāna* 18, 46-50 and in *Nār.* (I. 42) and Br. quoted by Aparārka (p. 599). *शुद्धे मेकः पुराभर्षितो रक्षोराक्षसाः। अग्निमाह्वय इत्येवं विप्रपातः सुगहापज्ञाः ॥ अदि* 63, 92-93. Kauṭ. IV. 8 appears to have had a different version of the story before him. The Mārkaṇḍeyapurāṇa chap. 16 has the story of Anjīmāṇḍavya. The story of Māṇḍavya was a leading case, it appears, in criminal law. The *Mṛcchakatika* (Act IX, 36) appears to refer to torture.



ments for releasing persons jailed or for rape on a woman in a lock-up. Kaut. IV. 10 prescribes alternative punishments of fines in lieu of the cutting off of fingers or mutilation of limbs for several offences such as theft or assault, abuse and defamation or showing contempt to the king by riding his horse or other conveyance or fabricating royal orders, prescribes death for selling human flesh, simple death or highest amercement for stealing images of gods or animals, for abducting human beings or for wrongfully seizing fields, houses, gold, gold coins, jewels and crops. Death with or without torture is provided for in Kaut. IV. 11 for murdering a man in a quarrel (but when the wounded man dies a fortnight or a month after the quarrel, highest fine or fine of five hundred *panas* and the expenses of medical treatment); different kinds of punishments are provided for wounding with a weapon, impalement for causing violent death of men and women, burning alive for those who aim at securing the kingdom or force entrance into the royal harem or incite wild tribes or enemies or instigate disaffection in the capital or country or army, drowning (or solitary confinement in a dark room, acc. to another reading) for a brāhmaṇa offender of this sort, cutting of tongue for insulting or abuse of parents or a teacher or an ascetic, drowning for one destroying the dam of a tank or for a poisoner or for a woman murdering a man, tearing to death by bulls for a woman who murders her husband or child or her elders or administers poison or sets fire. Kaut. adds that the punishment of death with torture has been prescribed by ancient smṛti-writers, but that it is proper to order simple death in cases of offences in which no cruelty enters. Kaut. IV. 12 starts by declaring that no man shall have sexual intercourse with a woman (not his wife) against her will, prescribes different punishments for forcible sexual intercourse with an immature girl or a girl that has attained maturity, of the same caste, or of a different caste, provides that for intercourse with a willing maiden the fine will be 54 *panas* for the man and 27 for the maiden, further provides that it is no offence for a man of the same caste to have intercourse with a maiden who has not been got married for three years after the appearance of menses, provides fines for deceitfulness in substituting one girl at marriage while showing another before, provides that if a woman whose husband is gone abroad commits adultery a relative or servant of the husband may keep her under restraint and that if the husband on his return forgives the woman her paramour may not be proceeded against,

but if he does not condone, the nose and ears of the woman may be cut off and the paramour should be sentenced to death. Kaut. IV. 13 provides punishment for brāhmaṇas eating or drinking what is forbidden to them and varying fines for administering forbidden food or drink to members of the four varṇas, provides fines for house-trespass and lurking house-trespass by night, provides punishments for witchcraft, provides burning alive in a vessel for adultery with the queen and other punishments for adultery with women of the several castes, whether guarded or unguarded, prescribes a fine of 24 paṇas for adultery with a nun.

The above is a meagre summary of Kautilya's section on kṛtakāśodhana. Kautilya is encyclopaedic on this subject as on several others. The number of offences dealt with by him is very large and his treatment in some respects compares favourably with such modern criminal codes as the Indian Penal Code. Many of the provisions contained in Kaut. IV are found in Yāj. (II. 273-304), in Nārada (in prakīrṇaka and elsewhere) and also in Manu (e. g. VIII. 365-368 about rape or adultery, VIII. 396-97 about washermen and weavers, IX. 235-226 about musicians and dancers, IX. 231-232, IX. 261-267). Why Kaut. treats of several offences under kṛtakāśodhana and not under the dharmasthiya section, it is somewhat difficult to say. It is probable that he included under dharmasthiya only those complaints or actions that were fought out between the parties, even though many of the wrongs complained of under vākparuṣya, dapḍa-paruṣya, saṅgrahaṇa and steḍya were criminal and the same as those treated of in the section on kṛtakāśodhana. In wrongs dealt with in the kṛtakāśodhana section it was the king or king's officers who themselves brought up the offenders for punishment and the offences were viewed not as mere private matters, but as matters in which the State was concerned for the eradication of crime in general. Kautilya in III. 20 speaks of prakīrṇaka but therein he seems to include some miscellaneous matters like non-return of borrowed articles or deposits (at the proper time and place), evading payment of ferry tax under the pretence of being a brāhmaṇa, connection with a public woman kept by another, misappropriating revenue collected as agent for a householder, a cāṇḍāla's touching an Ārya woman, inviting for dinner in honour of Gods and Manes Buddhist or Ajīvaka or Śūdra mendicants, abandonment of parents, child, wife or husband, brother or sister, teacher or pupil (when not



guilty of a grave sin), wrongful confinement of a person &c. Kautilya does not apparently include under *prakīrṇaka* all matters in which the king acts *suo motu* as Nār., Bṛ. and Kāt. do but includes these latter under *kantakaśodhana*. He, however, states here and there (IV, 1 and 13) that the matters dealt with under *kantakaśodhana* are quite analogous to those under such titles as *dandapārusya* treated of under the *dharmaśāstra* section. For example, in IV, 1. he says that if a physician through negligence causes loss of a vital part to a patient then the matter may be treated as *dandapārusya*.<sup>333</sup> So Kautilya probably represents a much earlier stage of judicial administration than Nār. or Bṛ., who included under *prakīrṇaka* all matters in which the king acted of his own motion (i. e. all that falls under *kantakaśodhana* in Kaut.).

The enumeration of *vyavahārapadas* is very ancient and authoritative, but there is hardly any scientific principle of classification underlying them. A writer called Nibandhanakāra quoted in the *Sarasvatīvilāsa*<sup>334</sup> (p. 51) holds that in all the *vyavahārapadas* from *ṛādāna* to *dāyavibhāga* the relief claimed is something to be given or rendered (*dāya*) by one party to the other, while in *vākpārusya*, *dandapārusya*, *sāhasa*, gambling and betting the principal relief is in the form of *danda* (punishment). Here there is a glimmering of the distinction between civil and criminal litigation. Two deep-seated principles in the administration of law and justice everywhere are 'fulfil your promises' and 'cause injury (*himsā*) to no one'. It is therefore that we find Bṛhaspati stating that lawsuits are of two kinds according as they originate in (demands about) wealth or in injuries. Yāj. II, 23 speaks of *arthavivāda* (civil dispute) and so made a distinction between civil and criminal disputes. Lawsuits<sup>335</sup> originating in wealth are divided into

333. विषयः ..... कर्मपरत्वेन विपक्षी मन्त्रमः । मन्त्रेयैस्तुष्ट्यकरणे दण्डपादकपे विद्यात् । अर्थशास्त्र IV, 1; दुर्बलं वेदम शक्यमनुष्ठप्यमूर्धसम्पदक्षमनपात्रयमयतिष्ठत्वं च अत्र कृत्यपर्याप्तं वा कृत्वा हिंसायां दण्डपादकपे विद्यात् । अर्थशास्त्र IV, 13.

334. तथा च नीलमनुष्ठप्यम् । द्विस्थानतो द्विगतिरिति । व्यवहार इत्यनुष्ठप्यते । तत्र निष्पन्नकारणोक्तम्-अनादानादिद्वयविभागान्नामां देवनिष्पन्नत्वं साहसाविषयकारणं दण्डनिष्पन्नत्वं द्विस्थानात्तेत्यर्थ इति । स. वि. p. 31.

335. द्विपक्षो व्यवहारः स्वाज्ञानविज्ञानसुन्दरा । द्विसप्तकोषेभ्यस्तु विज्ञानात्तुर्विधाः ॥ ... एतन्मर्थसुष्ठुत्पानि पदानि तु चतुर्विधा । इत्येवमभिज्ञानि विज्ञानेद्वयनेकधा । पादत्वे द्वे साहसे च परस्त्रीसंवहारादयः । द्विसौदम्यपदानि च स्वाज्ञानात्तुर्विधाः । स्मृतिच. II, p. 2, सू. मा. p. 377 (for first verse), पर. मा. III, pp. 20-21; सार्वे वादस्य मूलं स्वाज्ञादिना यस्मिन्नेदितम् । देवानदाने विज्ञानात्तुर्विज्ञानादनुष्ठप्यते ॥ कात्यायन (30) quoted in सुतिच. II p. 13.

fourteen sorts and those originating in injuries are of four sorts. These last are *vākpārasya* (defamation and abuse), *dandapārasya* (assault and battery), *sāhasa* (murder and other forms of violence) and *strisaṅgraha* (adultery). Here there is a clear distinction made between civil disputes (*arthamūla* or *dhanamūla*) and criminal ones (*himsā-mūla*). Kāt. also says that disputes have their source in two viz. not rendering what should be given and injury (*himsā*). Though in this way a distinction was made between civil and criminal disputes among the 18 titles of law, it appears that the set of rules and the procedure in both were the same (except as to the time allowed for reply, as to the qualifications of witnesses and as to proxies), the same courts tried both kinds of disputes and not as in modern times (when civil disputes are tried in one class of courts and criminal complaints in another and when the procedure also in both differs a great deal). There were not two sets of courts in ancient India as there were in England before the fusion of Law and Equity, but all courts in ancient and medieval India were required to administer the law of the texts tempered by common sense and reason as laid down by Br.: 'a decision should not be given by merely relying on the text of the śāstra; when consideration of a matter is divorced from reason and common sense loss of dharma results' (q. by Aparārka p. 599).

Nār. (I. 8-29), Br., Kāt., the Agnipurāṇa (253. 1-12 which reproduce almost *verbatim* the verses of Nār.) and others predicate several things about *vyavahāra*, such as that it is *dvīphala* (has two results) and so on. All these are brought together here below for convenience. *Vyavahāra* is:—

*Caturpād*—having four feet, viz. dharma,<sup>136</sup> *vyavahāra*, *caritra*, *rājāsāsana*, acc. to Nār. (I. 10); while acc. to Yāj. II. 8

136. Among the verses at the end of IV. 1 of the Arthashastra the following two verses occur: धर्मेन व्यवहारश्च चरित्रेण राजसासनम्। विवादार्थं चतुष्पादः पथिनः पूर्ववाक्यः। एव सत्ये स्थितो धर्मो व्यवहारस्तु साक्षिदुः चरित्रे संयते दुर्गता राजमाज्ञा तु शासनम् । These two occur in Nār. (I. 10-11) and Hārta (q. in S. V. p. 58) with variations, viz. both read चतुष्पादु व्यवहारोपगुह्यतः पूर्व- and चरित्रं दुस्तकारणे. For M. III. p. 10 reads चरित्रं तु स्वीकारणे. Lengthy explanations of these verses are offered in Aparārka (p. 597), Smṛticandrikā (II. pp. 10-11), Vyavahāra-prakāśa (pp. 7, 58-59) and other digests. It has to be noted that the four (dharma &c.) mentioned in these verses are the means of arriving at a decision in a law-suit, as Br. says: धर्मेन व्यवहारेण चरित्रेण वृत्ताजया। चतुष्पादोऽभिहितः सन्दिग्धार्थे विनिर्णयः । (in ह्युक्तिच= II. p. 10, वरा. nat. III. p. 16, न्य. 3. p. 6); व्यवहारोपि चरित्रेण वाच्यते यथा। साक्षिभिः साधितेऽप्यामीरक्षिषाः दुष्टान्त्वरोपगमे ह्युद्गुह्यते च व्यवहारतः यत्तेति राजकुलाधिपतिलिखितान्निर्णये। एवं हि तत्र लिखितम्-आभीरक्षिणां व्यवहारोपि सति दुष्टो न ब्रह्म इति। अपरांक p. 597 (on वा. II. 17.)



and Br. they are the plaint, the reply, the proof (*kriyā*) and decision (*nirṇaya*) or acc. to Kā. 31 (q. by Aparārka p. 616) plaint, reply, *pratyākālita*<sup>337</sup> and *kriyā*.

Dharma and the other three are really the four feet of *nirṇaya* (final decision), which is one of the four stages of a law-suit (*vyavahāra*) and so only in a secondary or far-fetched sense they are the four *pādas* of *vyavahāra*. Each of these four is said to be of two kinds. Vide Sm. C. II. pp. 10-11, Par. M. III. pp. 198-199, V. P. pp. 87-88 where the verses of Br. are set out and fully explained. A decision is said to be arrived at according to dharma when the wrong-doer admits his guilt or wrong-doing and the real owner secures his wealth or the relief due to him without having to undergo the trouble of a protracted trial by means of witnesses, documents &c. Similarly a decision to be arrived at by ordeals is said to be one by dharma. Dharma and *satya* are often identified (vide note 125 above) and here the wrong-doer tells the truth and the decision is therefore said to be by *dharma*. When a litigation is fought out in Court by citing witnesses, the decision is said to be by *vyavahāra*. 'Witnesses' are mentioned only by way of illustration (and imply documents, possession and other means of proof). When a defendant is guilty of not giving a straight reply or when his reply is tainted with faults and so is unacceptable and a decision is given against him on that ground alone it is still a decision by *vyavahāra*. *Caritra* means 'the usages of a country, village or family' (*deśasthitiḥ pūrvaśrūti caritraṁ samudāhṛtam*—Vyāsa q. in Sm. C. II. p. 11 and Vy. Nir. p. 138). This seems to be the sense of 'caritra' in 'phalakavāre charitratoti' occurring in Nasik Inscription No. 12 in E. I. vol. VIII. p. 82. In *prakṛpnaka* 24 Nār. seems to give the same sense 'sthityartham prthivypālāś. caritraviśayāḥ kṛtāḥ'. *Caritra* also means 'anumāna' (possession and presumptions). 'Anumānena nirṇitam caritramiti kathyate'—says Br. quoted in Vy. Nirṇaya p. 139 and Par. M. III. p. 198. Usages are the means of decision in certain cases apart from the question whether they are supported by the *smṛti* or

337. *Pratyākālita* means, acc. to Aparārka p. 616, the deliberation of the judge and *adhyas* as to where the burden of proof (*onus probandi*) lies and as to the method of proof. Acc. to the Mī. on Yāj. II. 8, *pratyākālita* in this sense is not a *vyavahārapāda*, since it is not directly related to the litigants. Acc. to Nār. II, 21 *pratyākālita* seems to mean an addition to the plaint or to the reply (i.e. a supplementary written statement). वादिप्रति-  
निविष्टाच्छेदं पादुनपादिना द्युनम् । तस्यापाकलिं नाम स्वदे तद्व निरुपते ॥

not. 'Caritram pustakaraṇa' means that such usages are valid means of decision if they have been written down or recorded by the king, while 'caritram tu svikaraṇa' (the reading in Par. M.) means 'usages become the rule of decision when they are accepted as valid by the people and by the courts'. When a king issues in a matter of dispute an order which is not opposed to *smṛtis* or local usages and which is thought out as the most appropriate one by the king's intellect or which is issued to decide a matter when the authorities on each of two sides are equally strong, it is a decision by royal command. Br. (in Par. M. III. p. 148) and Kāt. (verses 35-38 q. in Śm. C. II. p. 10, Par. M. III. pp. 16-17, V. P. p. 7) explain the above four. Brhaspati gives two meanings of *caritra*: (1) what is decided by inference; (2) the usages of a country. When it is said that each later one of the four stultifies each preceding one, the idea is not that in all cases it is so, but that it is so only in some cases. Vide Kāt. (43 q. by V. P. p. 90) which makes this clear. Some examples may be given. If one litigant says that he would prove his case by an ordeal, while the other says that he will prove his contention by human means (documents or witnesses &c.), then the trial by ordeal is not to be resorted to but the hearing of the case is to proceed in the ordinary way. Vide Kāt. 218 (q. by Mīt. on Yāj. II. 22) for this rule. Here *dharma* is set aside in favour of *vyavahāra*. Another example is given in the Par. M. III. p. 18. A person belonging to one of the four *varṇas* commits a seditious act (*rājadroha*) and through timidity admits his guilt (this is *satya*), but the witnesses (relying on Manu X. 130 that where the punishment would be death, a witness may tell a lie) deny that he was guilty of the act and he is let off. Here *dharma* is set aside in favour of *vyavahāra* (trial based on the depositions of witnesses). Vide Śm. C. (II. p. 11) for another similar example. In the country of Kerala visiting a prostitute was not condemned by custom. So even though it is established by witnesses that a person in Kerala did so, the local king may not punish him with a fine. Or suppose a person is charged with the offence of adultery with the wife of an *ābhira* and this fact is established by witnesses. Yet the man charged may show that among the *ābhira*s there is a usage (written down in the census records of the king) that adultery with an *ābhira* woman is not punishable. In such cases *caritra* (usage) annuls the (ordinary) *vyavahāra*. But suppose that in such cases the king, in order to improve the morals of a section of his subjects, issues a



proclamation that from the date of the proclamation one who is guilty of adultery with an abhira woman will be punished, then in that case usage will be set aside by royal command, which will then be the rule of decision. Similarly where there are no witnesses nor documents nor possession and no room for ordeal and there are no texts and local usages it is the king who has to decide as best as he can. Vide *Pitāmaha* q. in *Su. C.* ( II. p. 28 ). *Kāt.* ( verses 39-43 q. in *V. P.* p. 89 ) describes how and when each later one sets aside each prior one.

*Catusthāna*—having four bases viz. *satya*, witnesses, *pustakaraṇa* and *rājāsāsana*.

*Catuṣṭhāna*—having four means viz. *sāma*, *dāna*, *bheda* and *danḍa*.

*Caturhita*—benefitting the four ( the four *varṇas* and four *āśramas* ).

*Caturvyūpin*—that envelopes or reaches four viz. the disputants, witnesses, the *sabhyas* and the king.

*Catuṣkārīn*—that brings about four results viz. *dharma* ( justice ), gain, renown, love or regard of the people.

*Aṣṭāṅga*—it has eight limbs or members viz., the king, his good officer ( chief judge ), *sabhyas* ( *puṣṭe* judges ), *sāstra* ( law books ), accountant, scribe, gold, fire and water.

*Aṣṭādātupada*—has eighteen titles ( viz. *ṛṇādāna* and others enumerated above ).

*Śataśākhā*—having a hundred branches. This is approximate. *Nār.* ( I. 20-25 ) states that the 18 titles have 132 sub-heads ( *ṛṇādāna* 25, *upanidhi* 6, *sambhūyasamutthāna* 3, *dattāpradānika* 4, *asūerūṣa* 9, *vetana* 4, *asvāmlivikraya* 2, *vikriyādāna* 1, *kṛtānūṣaya* 4, *samayasyānapākarma* 1, *ksetravāda* 12, *striputrasayoga* 20, *dāyabhāga* 19, *sāhasa* 12, *vākpāruṣya* and *dandapāruṣya* 3, *dyūṭasamāhvaya* 1, *prakṛnaka* 6 ).

*Trigoni*—having three springs or motives viz. *kāma* ( sexual desire ), *krodha* ( hot temper ), *lobha* ( greed ).

*Dvayabhiyoga*—founded on two kinds of complaint viz. on suspicion or on fact. *Nār.* I. 27 says that a complaint on suspicion may be made against those who associate with men of evil repute ( such as thieves, gamblers and dissolute persons ) or it may be made on the ground that a certain person is really

the thief because the thing stolen is found with him (this is *tattvābhīyoga*). This latter may take two forms i. e. the grievance of the plaintiff may be negative (e. g. the defendant took or borrowed a debt or article and does not return it) or positive (e. g. the defendant has dispossessed the plaintiff of land).<sup>328</sup> Vide Mlt. on Yaj. II. 5.

*Daidūra*—having two openings i. e. it is based on the statements in the plaint and those in the reply.

*Dvīgata*—having two issues, that is, the decision may be founded on truth or on error.

*Dvīpada*—having two aspects, viz. relating to wealth and so civil (*dhanamūla*), and relating to injury and so criminal (*himsāmūla*). This is acc. to Kāt. 29.

*Dvīrutthāna*—having two springs or sources. It is the same as above. Hārita and Kāt. 30 mention this.

*Dvīśākhā*—having two trunks viz. *dharmaśāstra* and *arthaśāstra* (acc. to Kāt. 32).

*Dvīphala*—having two results, victory or failure (Kāt. 32).

*Ekamūla*—Hārita and Kāt. mention this. It means 'having only one (viz. what is to be established) as its root'.

*Sapana* and *apana*—where both parties to the litigation or one of the parties stakes (either through pride or anger or belief in the truth of his case) a certain sum of money to be paid by him in case of his defeat, that is called *sapana* law-suit (Yaj. II. 18); in this case the defeated party will pay to the king the usual fine for a defeated party and also the sum staked by him and will deliver to the successful party what is due to him. Vide also Vispudharmottara III. 324, 44. A lawsuit may also be *apana* (without a stake being declared). Nār. (I. 4) employs the words *sattara* and *anutara* for these two.

The Sm. C. (II. pp. 27-28), Par. M. (III. pp. 42-45), Sarasvatīvilāsa pp. 73-74, V. P. pp. 36-38, state that, according to Pītāmaha, the king may take cognizance of his own motion without

328. 'स्वार्थं नैवेच्छते कर्तुमन्यायं वा करोति च । न लेखयति । यस्मैर्धं तस्य पक्षो न सिध्यति ॥ कारणा. q. by निश्चय (on वा. II. 6), स्मृतिच. II. p. 39, मिता. on वा. II. 5. 'स्वादायतं मदीयं धर्मं सुधीना न बुद्धीमतिष्वेव । यतिर्धमस्येव वा सर्वैर्धं श्रेया-दिकमपहरतीति वा विधिच्छेदेन वा यो न लेखयतीत्यर्थः ॥ स्मृतिच. II. p. 39.



the complaints of private persons of certain matters called *aparādhas*, *padas* and *chaitas* and these works set out the lists of ten *aparādhas*, 22 *padas* and 50 *chaitas*<sup>339</sup>. The king may himself come to know about these or these matters may be brought to his notice by an officer called *sūcaka* or a private man called *stobhaka*, defined acc. to Kst. (33-34) as follows:—<sup>340</sup> that man is declared to be *sūcaka* who is appointed by the king himself for finding out the wrong-doings of people and who on coming to know of them conveys them to the king; that man is a *stobhaka* who with a sole eye to money and without being urged by the king informs the king first of actions (among the people) that are condemned by the *sāstras*. Therefore a *stobhaka* is a private informant for money. The ten *aparādhas*, acc. to Nār, are: disobedience of the king's order, murder of a woman, confusion of vargas, adultery, theft, pregnancy from one not the husband, abuse and defamation, obscenity, assault (*danda-pāruṣya*), abortion<sup>341</sup>. They were called *aparādhas* because they were met with fine. It will be noticed that some of these come under several *vyavahārapadas* and some like 'varṇasaṅkara' are included in *prakīrṇaka* by Nārada (v. 4). The king could by his own action investigate these even if no private complaint be lodged. Samvarta (quoted by the Sm. C. II p. 28, Par. M. III. pp. 44-45) gives another list which differs in some respects from the above. In the Nālanda copperplate of Devapāladeva (E. I. vol. XVII p. 310, p. 321) an officer called '*daśāparādhika*' is mentioned. In many grants from the 7th century onwards among the taxes remitted to the donees we often meet the expression 'together with the ten *aparādhas*' (*śadaśāparādhak*), in Valabhi grant of Dhruvasena III dated *samvat* 334 i. e. 653-4 A.D., E. I. vol. I p. 85, at p. 88, E. I. XVII p. 310 at p. 321, in Gupta Ins. No. 39 p. 179 of 766-767 A. D.), or '*daśāparādhādisamastot-pattisahito dattaḥ*' (in E. I. vol. VII p. 26, p. 40 of saka 852), or

339. एतानि चापराधांश्च पदानि वृत्तेस्तथा । स्वयमेवानि वृद्धीयान्परत्वावेद-  
कीर्तिना ॥ *वितामह* q. in *स्मृतिच* II, p. 27, पर. मा. III, p. 42.

340. शास्त्रेण निन्दितं स्वयंमुखो राजानमचोदितः । आवेदयति परपूर्वं स्थोमकः स  
उदाहृतः ॥ वृत्तेनैव निवृत्तो यः परदोषमवेक्षितुम् । सुपरं मुखेऽज्ञात्वा मुखकः स उदाहृतः ॥  
*कार्त्तवार्ध* q. in *स्मृतिच* III, p. 38 (reads *मुखपश्चाद्यचोदितः*), पर. मा. III,  
p. 45 (reads *स्वयं मुखपश्चाद्य* and *सुपरं समर्थ ज्ञात्वा*), स्व. प्र. p. 38 (reads  
*परदोषानवेक्षणे*).

341. आज्ञान्द्वयनकर्तारः क्षीयथो वर्मसङ्करोः । परकीयमर्थं कोपे नर्मक्षेत्रे पतिं विद्या ॥  
आकृष्यात्तद्व्यवहारं पदव्यवहारमेव च । वर्मस्य पातने क्षीयस्वपराधा वृत्तेषु ॥ *भारद्* q. in  
*स्मृतिच*. II p. 28, पर. मा. III, p. 44, स. वि. p. 73, *वृत्तनीतिपकरण* of *केशव* p. 12.

'sadaṇḍadāsāparādhaḥ' (E. I. vol. III p. 53 at p. 56, Torkheda plate of Govinda in śaka 735, and E. I. vol. III p. 263, 266, the Rajor inscription of Mathanadeva dated Vikrama samvat 1016). It is not correct to hold that the words refer to the right of the donee to be exempt from guilt arising from the commission of some traditional offences or that authority was conferred by the grant on the donee to deal with offenders committing the ten aparādhas and to recover the fines imposed by themselves (as suggested in J B O R S for 1916 p. 53n). No king would ever think of exempting donees in pious gifts or the villages in those grants from the results of such grave aparādhas as the murder of a woman, adultery, theft and abortion, nor is it possible to hold that a king authorised a private individual or individuals to exercise judicial power in such crimes as murder when (as we shall see later on) the power of dealing with *sāhasa* was not conferred on śreṇi or gāṇa tribunals. The real meaning appears to be that the fines levied by him for the commission of the aparādhas in the villages granted would be made over to the donees as part of the gift, when recovered by the king. The 22 *padas* were called *padas* of the king to distinguish them from the *vyavahārapadas*. According to Pītāmaha<sup>34</sup> they are: ripping open an animal's body (with a sharp weapon), destruction of growing crops, incendiarism, rape of a maiden, concealment of treasure trove, making a breach in an embankment or thorny hedge, grazing cattle over the field of another, destruction of a public garden, poisoning, high treason, unauthorised breaking of the royal seal, divulging the secret line of policy of the king, releasing from jail a prisoner, appropriation of the taxes or fines to be levied by the king (these are two), appropriating gifts (made by the king) or the *utsaka*

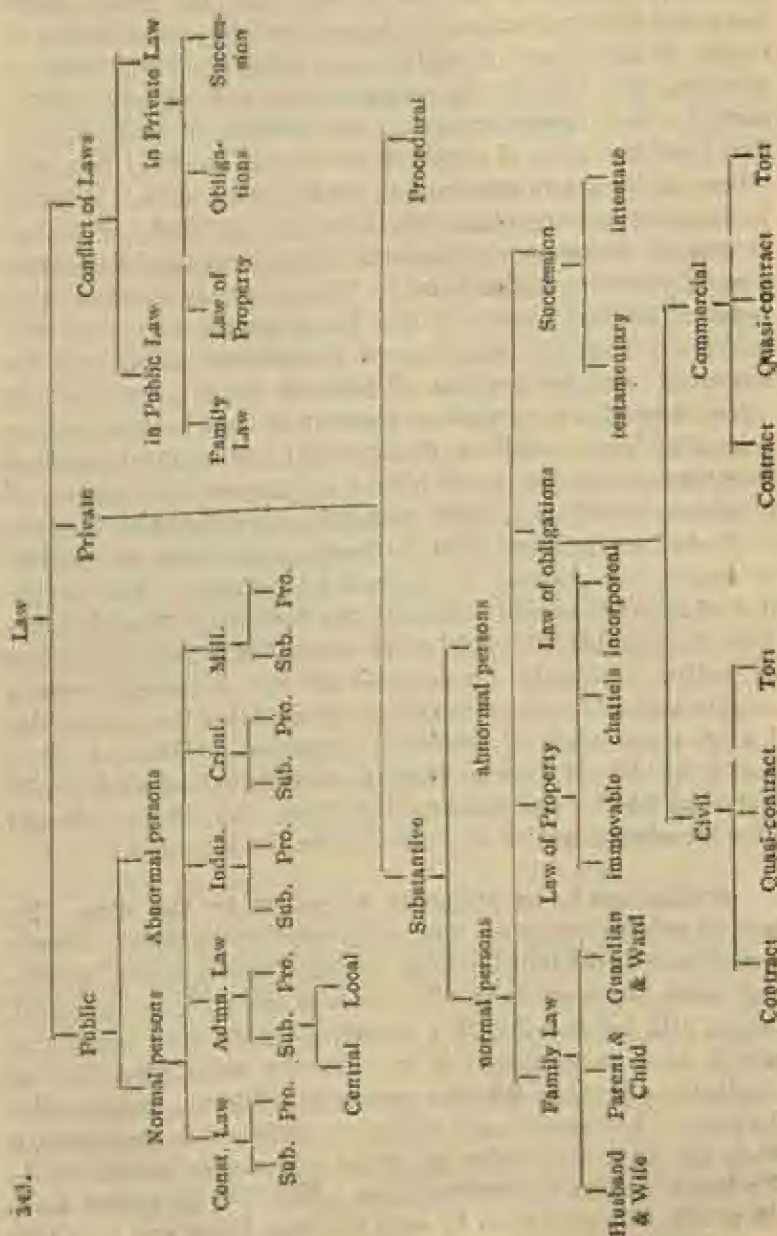
342. उत्कर्त्तुं सरसपाती चापदग्निद्वयं तथैव च । विजित्तकः कुमारपाथ निषानरसोप-  
भोगकः । सेतुकपञ्चमेला च सेवसञ्चारकस्तथा । आरामच्छेदकश्चैव गरुडश्च तथैव च ॥ राज्ञो  
ब्रह्मपत्नी च तन्नुद्रायेकस्तथा । तन्मन्त्रस्य प्रमेला च बद्धस्वैव च भोगकः । भोगद्वन्द्वौ  
च पृष्ठालि दानमुत्सर्गश्च ( ? सुरसर्पसिन्धु ) च । पट्टह. भोगणाच्छादी इत्यमस्वामिकं च यत् ॥  
राजापत्नीहं द्वारे पञ्चस्वैवाङ्गविनाशनम् । द्वाविंशति पद्मपातुर्वर्णपञ्चैपानि पण्डिताः ॥  
इति च II. p. 28, वरा. मा II. p. 45, स. वि. p. 73, म. व. p. 57. The passage  
is somewhat corrupt : स. वि. gives a summary in prose and begins with  
पिच्छकृतिः, while the rest read उत्कर्त्तुं or उत्कर्त्तुः. म. व. and इन्द्रनीलिकरच p. 12  
reads दानं विक्रयमेव च (which would mean 'appropriating a gift or property  
sold by the king').



(? *utsarga*, dedication to the public), preventing the proclamation (of royal orders) by beat of drum from being heard, receiving property from a person who is not the owner, receiving articles that are enjoyed by the king (without his permission), causing destruction (or loss) of any one of the (seven) elements (of the State). The fifty *chalas* were mostly breaches of etiquette before the eyes or in the presence of the king. According to Pītāmaha they are: obstructing the road, raising the hand threateningly, leaping over a fort-wall (without permission or reason), destroying a cistern, destroying a temple, filling up a ditch (dug round a fort), divulging the weak points of the king (to the enemy), unauthorized entrance into the harem or royal chamber or the treasury or the royal kitchen (these are four), prying when the king is taking his meals, voiding ordure or urinating or blowing the nose or passing wind in the presence of the king (these are four), to sit before the king on haunches (*parivāṅkūṣma*), to occupy the foremost seat in the king's presence, to enter royal presence in a dress more resplendent than the king's or supported by another or by the wrong-doer or at an improper time (these are four), to lie down on the bed or seat of the king or to put on his shoes (these are three), to go near the king (uncalled) when the latter is lying down on his bed, to serve the king's enemies, to occupy a seat that is not offered, to use gold in the dress or ornaments (these are two), to take *tambūla* (from the king's betel box) and chewing it (this is one), to speak loudly without being asked (by the king), to run down the king, to wear only one garment, to appear before the king with oil on the hair, to untie the hair (before him), to cover one's face, to have a body painted with figures, to wear a garland, to shake one's garment, to cover the head, to be bent on finding the weak points of the king, to be thick with evil men (or to touch the king), to have dishevelled hair, pointing out the nose, the ears and the eyes (these are three), to pick the teeth, to cleanse the ear or the nose (these are two). As the list of *chalas* is a very long, one the verses are not quoted below, but are given in the Appendix (note 342 a). Śukra (IV. 5, 73-88) quotes all the verses from Nārada and Pītāmaha on the *aparādhas*, *padas* and *chalas* and in III. 6 also gives a list of ten sins, which is different from that of the *aparādhas*.

2. In modern works on Jurisprudence various classifications of Law are stated. For example, Dr. E. Jenks in 'New Jurisprudence' (1933) furnishes at the end of his work a very

elaborate classification which is set out in the note below.<sup>34</sup> Ancient systems cannot be expected to present such a classification. Ancient Hindu smritis were content, as shown above, to





divide the *vyavahārapadas* into civil and criminal. They more or less deal with most of the subjects brought out in modern classifications but not in an orderly manner. They also divide laws into substantive and adjective or procedural. The *vyavahārapadas* correspond to the former and the rules about procedure, the appointment of Judges and the constitution of courts, evidence and limitation are adjective law. Some of these are dealt with in the commentaries and digests under a section called *vyavahārumūrtikā* (the elements of judicial procedure) and the rules of evidence are stated in Yāj., Nār. and others under the *vyavahārapada* *ṛnādāna* once alone. It would be more convenient to deal with adjective law first. That law is now of antiquarian or academic interest only and will therefore be treated somewhat briefly. The *smṛtis* lay down a high level of judicial procedure, but the procedure must have been modified to suit the requirements of different times and the resources and inclinations of different kings. Some of the *vyavahārapadas* viz. *ṛnādāna* (recovery of debt), *stripuṃsayaoga* and *dāyabhāga* (partition of heritage) are of great practical importance even now, as all Hindus are governed in matters of partition, inheritance, debts, marriage and sonship by the rules of Hindu Law gathered from the *Smṛtis* and digests as modified by legislative enactments and judicial decisions. For description of Judicial administration in the Buddhist texts and times, vide Fick pp. 107, 111-112 (which show that the administration of justice in Vesālī, the capital of the Licchavis, was a complicated affair, one of the courts being that of the *atthakulakus* i. e. of eight heads of families), Jayaswal's 'Hindu Polity', part II pp. 156-157, Hiouen T'sang's account in Beal's B.R. W. W. Vol. I pp. 84-85; and Bombay Gazetteer, Vol. 24 pp. 266-267 (for the administration of Justice under the Marathas).

Justice was to be primarily dispensed by the king. He was an original court as well as an appellate tribunal. *Smṛtis* and digests insist that the king cannot dispense justice by himself alone, but must do so with the help and guidance of others. Manu VIII. 1-2 and Yāj. II. 1 provide that the king wearing no gaudy dress or ornaments is to enter the *sabhā* (the Hall of Justice) for looking into the causes of litigants, accompanied by learned *brāhmanas* and ministers proficient in statecraft, is to be free from hot temper and greed and decide according to the law laid down in *dharmaśāstras*. Kāt. (55-56 quoted in V. M. p. 278, Mīt. on Yāj. II. 2) says the same thing and adds that

a king who examines disputes in the presence of the Judge, the ministers, learned brāhmanas, the purohita and the sabhyas attains heaven. Vide Śukra IV. 5. 5 to the same effect (taking half verses from Yaj. and Kāt.). The king was not to decide by himself but was to follow the advice of his judge, though the responsibility even when he took advice was the king's. Vide Śukra IV. 5. 6 (*naikah paṭyeca kūrṇāni*). Nār. I. 35 says that the king has to abide by the view of the judge (*prāḍvā-karmate nhitah*). This sentiment that it is not safe for a single man, however clever he may be, to undertake to decide a dispute was so ingrained among all people that Kālidāsa gives expression to it in the *Mālavikāgnimitra* (Act I) when he pens the sentence 'sarvajñasyāpyekākino nirṇayābhyupagamo doṣāya'. In *Raghuvamśa* 17.39, Kālidāsa states that king Atithi always looked into the causes of people himself with the help of judges (*dharmastha*)<sup>344</sup>. Pītāmaha<sup>345</sup> states that a person even if he knows the rules (of dharma) should not give a decision single-handed. Justice was to be dispensed openly in the court and not secretly. Śukra (IV. 5. 6-7) states<sup>346</sup> that neither the king nor the judge nor the sabhyas were to hear a cause in secret and that there were five reasons that led to the charge of partiality in judges viz. hot temper, greed, threats, enmity and hearing disputes in private. Judicial action is divisible into two provinces, viz. that of law and that of fact. The latter is a field in which it is impossible to lay down rules for determination. On points of facts there was a vast scope for the king's or judge's discretion. And therefore the texts contented themselves by saying that the king or judge should keep an open or impartial mind, should be free from hot temper or greed, should hear causes under the glare of public view and should not decide at his own will alone but with the help of learned brāhmanas and sabhyas. As regards points of law the king or judge is

344. स धर्मस्थानसः शब्दद्वयित्वादिना स्वयम् । इदं संभवन्नेदं व्यवहारान्-  
तन्निमित्तः । १७. ३९. The word धर्मस्थ used here for judges may be noted.  
Kaṇṭ. uses the same word in III. 1. From a detailed examination of the  
*Raghuvamśa* it appears very probable that Kālidāsa had closely studied  
Kaṇṭhiya's *Arthashastra*.

345. तस्मात् सप्तदशैकैक विधिज्ञेनापि धर्मतः । इति विवाहोऽन्यथा धर्मकथननिवे-  
दात् । अ. नि. p. 67.

346. नैका पक्षेण कार्यानि वादिनोः श्रुत्वाह्वयः । यानि च ह्यः यज्ञः सम्प्राप्त्यै  
कदाचन । पक्षपाताधिरोपणं कार्यानि च यज्ञ वै । यत्प्रतिभवेद्वा वादिनोश्च यज्ञः इति ।  
शुक्र. IV. 5. 6-7.



required to decide according to the rules of dharmaśāstra (Manu VIII. 3., Yaj. II. 1, Nār. 1. 37, Śukra IV. 5. 11) and where there are no texts the king should decide in accordance with the recognized custom of the country. Kāt. solemnly warns<sup>347</sup> the king against legislating or deciding according to his own will in the face of the texts: 'If a king decides (a case) by his own *fat* where there is a text (of the śāstra applicable to it) it leads him away from heaven, it causes ruin to the people, it brings danger (to the king) from the armies of his foes and it strikes down the roots of (long) life; therefore a king should decide the causes of people according to the rules of śāstra; but in the absence of smṛti-texts he should carry out (judicial administration) according to the usages (iit. the views) of the country'. These are the same as Śukra (V. 5. 10-11). Kāt. further prescribes that the usages established in a country by the approval of its people and that are not in direct conflict with Veda and Smṛtis should be recorded in writing under the seal of the king. Pītāmaha<sup>348</sup> quoted by the Sm. C. (II. p. 26) states that in certain cases it is the king's own mind that is the deciding factor.

How the king directly dispensed justice is illustrated by the rules of Gaut. XII. 40-42 and Manu VIII. 314-316 that a thief who has stolen a brahmana's gold may run with dishevelled hair to the king carrying an iron club or a heavy bludgeon of khadira wood, may declare the sin committed by him and request the king to award punishment, that the king may then strike him with the club and that whether the thief dies or lives after the king so strikes him he becomes free from the guilt. The king was also the highest court of appeal. The Rājatarāṅgiṇī (VI. 14-41) states how king Yaśaskara heard the appeal of a person who had sold his house without the well, who on returning

347. अस्वर्गा लोकनाशाय परानीकमपाह। आधुर्बोजहरी राज्ञां सति वाक्ये स्वयं-  
कृतिः ॥ तस्माच्छास्त्रानुसारेण राजा कार्यणि कारयेत् । वाक्याभावे तु सर्वेषां देशहृतेन तज-  
येत् ॥ कात्या. q. by अपराज् p. 399, स्मृतिच. II. pp. 25-26, परा. मा. III. p. 41.  
शुक्र. IV. 5. 10-11 are the same as कात्या. यस्य देशस्य यो धर्मः प्रवृत्ताः सार्वकारिकाः ।  
स्मृतिस्मृत्यविरोधेन देशहृदः स जल्पते ॥ देशस्यानुमतेनैव व्यवस्था या निरूपिता । लिखिता तु  
सदा धार्म्या बुद्धिर्वा राजमुद्रया ॥ कात्या. q. in स्मृतिच. II. p. 26, परा. मा. III. p. 43.  
Vide सङ्ख. 8. 3 for देशहृदः.

348. पञ्च चैते हेतवो न निवृत्ते तत्र पाधिपत्यव्यवहारिण्यं इत्याह स एव (पितामहं  
एव) । हेतवो एव न निवृत्त न मुक्तिर्न च साधिकाः । न च विप्रापहारोस्ति धर्मात् तत्र  
पाधियः । निवृत्तं ये न ज्ञापयः स्तुतिं दा। सन्धिपत्यव्यवहारिणः । तेषां चतुः प्रमाणं इत्याह स सर्वत्र  
अधुर्बलः ॥ स्मृतिच. II. p. 26.

from a long absence abroad found the well usurped by the vendee and was defeated in the lower courts because the vendee had bribed the scribe to write 'kūpasahita' instead of 'kūparahita' and how the king decided in the man's favour by exposing the vendee with a trick; while in VL 42-69 the same king is said to have reversed another decision about a contract by a man whose 100 coins had fallen into a well. The same work in another place (IV. 82-108) states how a brāhmana wife appealed to the king of Kashmir to find out the culprit who had murdered her husband in his sleep and how the king by superhuman means held a sorcerer to be the murderer.

When owing to pressure of other weighty business the king cannot attend to the work of administering justice, the king should appoint a learned brāhmana together with three sabhyas to decide the disputes of people. Vide Manu VIII. 9-10, YsJ. II. 3, Kat. 63<sup>349</sup> (same as Śukra IV. 5. 12). The qualifications of a judge are set out in many places. Ap.<sup>350</sup> Dh. S. II. 11. 29. 5 prescribes that in law-suits judges shall be endowed with learning, good family, and should be old, clever, and careful about dharma. Nār. requires: 'The Judge should be proficient in the texts on the eighteen titles of law, their 8000 sub-heads, in logic (ānvikṣikī) and should be master of the Veda and Smṛtis. Just as a physician takes out from the body an iron dart by the employment of surgical instruments, so a judge should extricate from a law-suit the deceit (underlying it)'.<sup>351</sup> Kat. says that a judge should be restrained, born of a good family, impartial, not repellent (or harsh in his manners), steady, afraid of the next world, highly religious, assiduous and free from hot temper. A fine enumeration of the qualities required in a judge is given in the ancient drama Mṛcchakatika (IX. 4). Vide Mānasollāsa

349. यदा कुर्यान्न स्वयति स्वयं कार्यविधिर्नयम् । तदा तत्र नियुजितं जाह्नवं शास्त्र-  
प्रारम्भम् ॥ इदानीं कुलीने गणपत्यमृतोद्योगं विप्रम् । परत्र भीमं धर्मिष्ठमुक्तं कौशल्यजितम् ॥  
कार्यम्. quoted in अ. ना. p. 279, स्मृतिच. II. p. 16; राज. र. p. 18 (first verse),  
निता on वा. II. 3 (2nd verse); अथवास्तव p. 196, श्रुत IV. 5. 12-13. Some  
read दुर्धं कुलीनम्.

350. विवादं विद्याभिजनसन्ध्यां ब्रह्मा मेधाविनो धर्मैर्विनिर्मातुः । अप. ध.  
II. 11. 29. 5.

351. अष्टादशपदाभिज्ञसन्धेवाहसहस्रविद् । आग्नीक्षिपगादिकुशलः क्षुतिरसृति-  
परापणः ॥ यथा शल्यं भिषकापादुदरेण्यन्तयुक्तिभिः । यदाविषाकस्तथा शल्पमुदरेऽथ-  
वास्तु ॥ नारद प. 19 स्मृतिच. II. p. 14. The 2nd is नारद (III. 16). It is  
quoted as हारीश's in राज. र. p. 19.



II. 2 verses 93-94. A Judge was generally styled *prādvivāka* or sometimes *dharmādhyakṣa* (as in Bāj. R. p. 18),<sup>352</sup> or *dharmapraavaktṛ* (Manu VIII. 20) or *dharmādhyakṣin* (as in Mānasollāsa II. 2, verse 93). *Prādvivāka* is an ancient word. It occurs in Gaut. XIII. 26, 27 and 31, Nār.<sup>353</sup> (I. 35), Bṛhaspati (q. by Aparārka p. 602). The word is a combination of 'prād' (one who puts questions to the suitors, from the root 'pracch') and 'vivāka' (who speaks out or analyses the truth, from the root 'vac' with 'vi'). The derivation is given by Nār., Bṛhaspati, Kāt. 68 and others. The word 'praśnavivāka' (which is quite close to *prādvivāka* in sense and etymology) goes very far into antiquity and occurs in Vaj. S. XXX. 10 and Tai. Br. III. 5. 6. The existence of the word *prādvivāka* as early as Gautama (about 500 B. C.) and of *praśnavivāka* in the Vaj. S. and Tai. Br. clearly establishes that in ancient India judicial functions became separated very early from executive or political functions.

The chief Judge was preferably to be a learned brāhmana (Manu VIII. 9, Yāj. II. 3). Kāt. (67)<sup>354</sup> and Śukra IV. 5. 14 prescribe that, if a learned brāhmana cannot be had for the post of the chief judge, then a kṣatriya or a vaiśya who knows the

352. स्मृतिः । कुलशीलमुपोदेतः सर्वधर्मपरायणः । सर्वज्ञः पञ्जहो दृढो धर्माध्यक्षो विधीयते । राज. र. p. 18.

353. विवादमभितं धर्मं वृच्छति प्रकृतं मतम् । विवेचयति वस्तुमावाहविवाकस्ततः स्मृतः ॥ कारवा. q. in स्मृतिच. II. p. 14; स्पष्टदासभितं धर्मं वृच्छति माविति विधतिः । विवेचयति वस्तुमिन् वाहविवाकस्ततः स्मृतः ॥ कारवा. in स्प. मा. p. 274; अपरार्क p. 602 quotes this as from बृहस्पति. The मित्ता on वा. II. 3 derives 'आर्यवर्यधर्मो वृच्छतीति वाह तयाचधर्मं विवृद्धमविकृष्टं च सत्यैः सह विविमक्ति विवेचयति नेति विवाकः । वाह चासौ विवाकश्च वाहविवाकः'. वृषोत्तरपक्षो वृच्छतीति वाह निर्णयं विज्ञेयेन प्रकतीति विवाक इति पौनिकी तरुण संज्ञा । वाहविवाक इति वृषोदरादित्वात्वायुः । स वि. p. 64. Vide अपरार्क p. 602 and राज. र. p. 18 for another verse of बृहस्पति 'विवादे वृच्छति' and मित्ता on वा. II. 3. and राज. र. p. 19 for a verse of व्यास on the derivation of वाहविवाकः. Vide शुक्र IV. 5. 66 for the derivation of विवाक from the root विवृ or वृच्छ. नर्पादपै यज्ञविवाकम् । राज. सं. XXX. 10.

354. ब्राह्मणो यत्र न स्वातु जातिर्न तत्र योजयेत् । वैश्यं वा धर्मशास्त्रज्ञं ब्रह्मं पत्नेन वर्तयेत् ॥ कारवा. q. by मित्ता (on वा. II. 3), अपरार्क p. 601, स्प. मा. 279, राज. र. p. 23. स्मृतिच. II. p. 17. The स्मृतिच. II. p. 17 cites another verse where the first quarter is यत्र विप्रो न विद्वान् स्वात् and the other three are the same as above: शुक्र IV. 5. 14 (यदा विप्रो न विद्वान्) is the same as this. वैद्यशास्त्र IV. 44 defines ब्राह्मणमुत्र (which occurs in मनु VIII. 20) 'मर्माधानादिभिर्मन्त्रैर्देवायनयनेन च । माध्यापयति माधीते स मयेद् ब्राह्मणमुत्रः' । कुल्लूक on मनु. VII. 85 explains यो ब्राह्मणः किवारदित आत्मानं ब्राह्मणे जयीति स ब्राह्मणमुत्रः ।

dharmaśāstras may be appointed, but the king should carefully avoid appointing a śūdra as a judge. Manu VIII 20 says that the king may prefer a brāhmaṇa who is not learned and maintains himself by the mere fact of his caste, but should never have a śūdra as the expounder of dharma and that the country whose king has a śūdra as judge to expound dharma comes to ruin as a cow sinks in mud. Vyāsa (q. in S. V. p. 65) is to the same effect. Manu (VIII 10-11), Yāj. (II 3), Nār. (III 4) and Śukra IV. 5, 17 state that the king should appoint at least three sabhyas (*justice judges or members of the court of justice*) to associate with the Chief Judge in the disposal of suits (the idea being that three are the least number of sabhyas to be appointed). Kaut. (III 1) prescribes that the courts called 'dharmaśāstha' should be manned by three judges called *dharmaśāsthas* who should possess the qualifications and status of amātyas and that such courts should be established on the borders of the provinces, for a group of ten villages (*saṅgrahana*), for a district (*droṇamukha*, 400 villages) and provinces (*śādhāniya*, 800 villages). Bṛhaspati says<sup>355</sup> that the sabhyas may be seven, five or three. As in the case of the chief judge, the sabhyas should be preferably brāhmaṇas, but they may be ksatriyas or vaiśyas. Manu (VIII 11) and Br. say that when in a sabhā three brāhmaṇas learned in the Vedas sit along with the chief judge appointed by the king that is like the *sabhā* of Brahman or it is like a sacrifice. Yāj. II. 2, Viṣṇudharmasūtra III. 74, Kat. 57, Nār. III. 4-5, Śukra IV. 5. 16-17 and others require the following qualifications in the sabhyas: they should be endowed with the study of the Vedas, should know dharmaśāstra, should speak the truth, should be impartial to friend or foe, should be steady, devoted to their work, intelligent, hereditary, proficient<sup>356</sup> in arthaśāstra. Impartiality in the king and the judges is insisted on in the texts. Vide Vas. 16. 3-5, Nār. (I. 34, III 5). The king was not to appoint as sabhyas those who were ignorant of the usages of the country, who were atheists and devoid of the study of śāstras, who were either puffed up, hot-tempered, greedy or distressed (Br. q. in Sm. C.

355. लोकवेदाङ्गधर्मज्ञाः सप्त पञ्च त्रयोपि वा । यत्रोपविष्टा विष्ठाः स्युः सा पञ्चत-  
इती सभा । बृहस्पति quoted in स्मृतिच. II. p. 15. It is also शुक्र. IV. 5. 26.

356. स तु सन्धौ निरैर्दुक्तः शङ्कैर्मोहैर्द्विजोत्तमैः । धर्मशास्त्रार्थकुशलैर्यशास्त्रविद्वद्भिः ।  
कारण. ५. by मित्रा (on वा. II. 2). स्म. मा. p. 278, स्मृतिच. II. p. 15; अतुल्य-  
धनवन्तश्च धर्मज्ञाः सत्परादिकः । सर्वशास्त्रमनीषाश्च सन्धाः कार्यो द्विजोत्तमाः । कारण. ५.  
by अपरार्क p. 601, राज. र. p. 23. Vide शान्ति 53.2 for सन्धयुग्मः.



II p. 15). The chief justice (*prādivāka*) with the *sabhyas* constituted the Court, being appointed (*niṣkṛta*) by the king. It was stated above that the king was to enter the Hall of Justice with the chief justice, *sabhyas* and *brāhmaṇas*. The distinction is that *sabhyas* were appointed by the king as judges, while *brāhmaṇas* were persons who were well-versed in *dharmaśāstra*, who could attend the Court, though not appointed (*niṣkṛta*) and whose opinions on difficult points of law were respectfully received by the judges. They (the learned *brāhmaṇas*) were in the position of *amici curiae*. All and sundry were not to intermeddle in trials before the court, but only those who were learned in *dharmaśāstra* were allowed to express their opinions on knotty points. Vide<sup>357</sup> *Mit. on Yaj.* II 2. *Manu* VIII. 12-14 (same as *Nār.* III. 8-10 in a different order) say that either a person should not enter a *sabha* or if he enters should say what is proper, that a man remaining silent or declaring what is false becomes a sinner and that, where in spite of the opinion of some or all *sabhyas*, justice is not done by the king, they become participators in the king's guilt. *KaL* (74-78) makes it the duty of the *sabhyas* to bring round a king gradually to the right path when the king is about to start on the path of injustice and to state the true decision.<sup>358</sup> In the case of the *brāhmaṇas* their duty ends with stating the rule according to the *śāstras*; they have not, like the *sabhyas*, to prevent the king from doing the wrong thing or to bring him round to the path of right and justice. *Nār.* (III. 1) states elsewhere that one who is not appointed by the king should not interfere by his speech in the decision of a case and that if he does so he would be fined. This applies to the people that are present in the court to see the trial or that accompany the litigants. It has no application to learned *brāhmaṇas*, who though not appointed by the king, can state their view of the law.<sup>359</sup> Vide *Vyavahārasāra* pp. 16-17. *Nār.* III. 17 requires that all the judges of the Court should give a unanimous decision, and that then only the decision leaves no grievance (in the

357. तत्र ब्राह्मणा अनियुक्ताः सभासदस्तु नियुक्ता इति भेदः । मिता, on वा. II. 2.

358. अन्त्यायेनापि तं बान्धे येश्चयन्ति सभासदः । तेषुपि तज्जापिनस्तस्माद् वाचनीयाः जनैर्देवाः ॥ अधर्माय यदा राजा नियुज्यते विवाद्विनाद् । विज्ञानं त्वन्ति सत्यस्तदाकारे निवर्तयेत् ॥ कात्या. ७. in स्मृतिसं. II. p. 24, राज. र. pp. 24-25.

359. नियुक्तो वानियुक्तो वा धर्मज्ञो वक्तुमर्हति । देवी वाचं स वदति वा । शास्त्रमुपजीवति ॥ नारद III. 2 (= शुक्र IV. 5. 28.)

mind of the litigants ).<sup>360</sup> The V. P. ( p. 27 ) states, following Jaimini XII. 2, 22, that the opinion of the majority of *sabhyas* is to prevail.<sup>361</sup> According to Gaut.<sup>362</sup> XI. 25 as interpreted by Aparārka p. 599, if there is a difference of opinion among the judges, the king is to seek the advice of those who are learned in the three Vedas ( along with the other *vidyās* ) and decide the matter finally. Kat. (58-59) states that the court of justice should have associated with the task of deciding disputes some merchants who belong to a guild, who are men of good family and character, of mature age, endowed with wealth and decent conduct and free from malice. The Mit. and Sm. C. say that this is done to placate the common people in the country.<sup>363</sup> This also shows the growing importance of the moneyed classes and of traders. In the *Mṛcchakatika* a *śreṣṭhīn* and a *kāyastha* are associated with the Judge.

The chief judge and the *sabhyas*<sup>364</sup> were not to hold conversation in private with any one of the litigants while the suit was pending and if they did so they were liable to be fined ( Kat. 70). Kauṣ. IV. 9 prescribes fines and even corporal punishments for judges (*dharmaśāstas*) and *pradeśṭṛs* who corruptly give wrong decisions, cause loss or sentence to corporal punishment. If the *sabhyas*<sup>365</sup> give a decision, which is opposed to *smṛti* and usage, through friendship, greed or fear, each was liable to be fined twice as much as the fine to be paid by the defeated party ( Yaj. II. 4, Nār. I. 67, Kat. 79-80). The Viṣṇu Dh. S. V. 180 and Br. prescribe banishment and forfeiture of all property for

360. तत्र सम्पदो जनाः सर्वे साध्वेऽद्विवि मय्यते । स निःशङ्को विवादः स्यात् सङ्कल्पः स्यादुक्त्यन्याः ॥ नारद ( III. 17 ).

361. संख्याधैवमे तु पूर्वोक्तविरोधे मूयसां स्यात्सधर्मत्वमिति न्यायेन विवक्षितसावधिकसंख्यावचनमादरणीयं युक्तमाह । नार. म. p. 27. जैमिनि's *śūtra* ( XII. 2, 22 ) is विवक्षितविश्वधर्माणां समवाये मूयसां स्यात्सधर्मत्वम् ।

362. विमतिपत्नी वैचिकित्शेभ्यः मत्तवह्मत्प निडो गमयेत् । बौ. XI. 25; विचार-काण्डमधोऽध्यायविमतिपत्नी वैचिकित्शेभ्यः समभित्तयतुर्द्व्यविचारपानेभ्यो न्यायं मत्तवह्मत्स्या-वगम्य न्यपहारं निडो सताती निर्भयं गमयेत् । अपरार्क p. 599.

363. कुलश्रेष्ठान्बहुजनविश्वजिह्मकरीः । दण्डिभिः स्यात्कलियपैः कुलश्रेष्ठैरपिहितम् ॥ अतोऽसौ बभिविज्ञात कर्तव्या न्यायदक्षिणः । कात्या. quoted by मिश्र. ( on वा. p. 2 ), स्मृतिच. II. p. 17, परा. मा. III. p. 31, न्य. म. p. 31 ( which explains कुलश्रेष्ठैः ३३ इत्यैः ).

364. अनिर्णयितुं यद्यर्थे सम्भाषेत स्तोषिणः । पादुविवाकोष दण्डः स्यात्सम्भाषैव विशेषतः ॥ कात्या. q. by अपरार्क p. 604, न्य. मा. p. 263, परा. मा. III. 35.

365. स्नेहावृक्षानतो वापि लोभाद्वा मोहोऽपि वा । तत्र सम्पदोऽन्यथावादी दण्ड्योऽ-सत्यः स्मृतौ हि सः ॥ कात्या. q. by अपरार्क p. 603; स्मृतिच. II. p. 22.



sabhyas that give an unjust decision or take bribes. Kat. 81 prescribes that the loss caused by the fault of sabhyas must be made good by them to the losing party, but the decision given by them will stand<sup>366</sup>. Śukra (IV. 5. 63-64) prescribes the punishment of a thief for a *lekṣaka* (a scribe) taking down a different deposition from the one actually given or for a sabhya making use of such a deposition knowingly; IV. 5. 93 prescribes fine and removal from office if a sabhya gives a wrong decision through greed &c. and IV. 5. 282 prescribes a fine of 1000 panas against a judge giving a corrupt decision. There must have been a few cases of judges taking bribes in ancient India as in modern times (even Lord Bacon in the 17th century was found guilty of taking bribes as Lord Chancellor and confessed his guilt). In the *Daśakumāracarita*<sup>367</sup> (VIII. p. 131) the cynical jester Vihārābhadrā says to his king that judges decide matters just as they please after taking bribes and the king thereby incurs infamy and the sin of doing injustice. It was believed that when a just decision was given, the king and the sabhyas became free from sin, the sin reaches him only who is guilty (whether plaintiff or defendant); but where an unjust decision is rendered a quarter of the sin falls on the litigant (plaintiff or defendant) who is guilty of *adharma*, one quarter each on the witnesses, the sabhyas and the king. The Baud. Dh. S. I. 10. 30-31, Manu VIII. 18-19, Nār. (III. 12-13) have the same two verses. The *Vyavaharatattva* (p. 200) says that Hārita also had the same verses. In the *Mattavilāsa-prahasana* (pp. 23-24) reference is made to the giving of bribes to the presiding officers of courts (we should read '*adhikāraṇa-karāṇikānām*' instead of '*—kārāṇikānām*'). Kauṭ. IV. 4 makes it a duty of the *samāhartṛ* to employ spies in various disguises to test the honesty of judges (*dharmasthās*) and magistrates (*pradeśṭṛs*) and, if they were found to be ready to succumb to bribes, to order their banishment.

As to *sabhā*, vide pp. 92-93 above. The *Nirukta* (III. 5) in explaining Rg. I. 124. 7 (*gaurūg-iva samāye dhanūnām*) states that *gaurū* means a wooden board or stump in a sabhā on which a sonless widow claiming her husband's wealth had to stand when claiming it.

366. सम्प्रदोषात्तु यज्जटे देवं सम्प्रेततत्त्वा । कार्ये तु कारिणामेव निश्चितं न निश्चा-  
ददेत् ॥ कारवा. q. by स्मृतिच. II. p. 23, न. वि. p. 69.

367. द्वितीयेन्द्रोऽप्यविषयमानात् प्रजानामाक्रोशाद् ब्रह्मन्मनकणः कटे जीवति ।  
तथापि मातृविधाकादयः स्वेच्छया जयपराजयो विद्यमानाः पतिनाकीर्त्ता च अर्थात्मानान्  
चार्येणोपयन्ति । दशकुमारचरिते VIII. p. 131.

A court of justice was (acc. to Br.<sup>368</sup>) of four kinds, viz. one established (*pratiṣṭhita*) in a fixed place such as a town, *apratīṣṭhita* (not fixed in one place, but moving from place to place as on a circuit), *mudritā* (the court of a judge appointed by the king, who is authorised to use the royal seal), *śāsitā* (or *śāstritā*, acc. to S. V. p. 68 and Par. M. III. p. 24) i. e. the court in which the king himself presides. The Court of justice (in the capital) was to be to the east of the palace as stated by Śaṅkha and Br. (in Sm. C. II. p. 19) and was to face the east. The court-house should be decorated<sup>369</sup> with flowers, statues, paintings, idols of gods and should be furnished with incense, throne or seat (for the king or judge), seeds, fire and water (Br. in Sm. C. II. p. 19). The *sabhā* was also called, as stated above, *dharmādhikāraṇa* or simply *adhikāraṇa* (in *Mṛcchakaṭika* IX and the *Kādambarī*, para 85) or *dharmasthāna* or *dharmāsana* or *sadaś* (Vas. 16. 2). The *Kādambarī* (para 85) speaks of the royal palace as having a court of justice where the judges (*dharmādhikārin*) sat on high cane seats. The time for holding the court is the morning, acc. to *Manu* VII. 145, *Yāj.* I. 327. *Kaut.* states that the king<sup>370</sup> should look into the disputes of people in the 2nd part of the day divided into eight parts. The *Dasakumāracarita* (note 367 above) shows the same thing. *Kāt.* (61-62) prescribes that the time for holding the court as laid down in the *śāstras* is three parts of the day after the first part (when the day is divided into eight parts) i. e. from 7-30 A. M. to noon. There were holidays on which courts were closed i. e. on 8th and 14th *tithis*, Full Moon day and the *amūlīyā* of every month (*Saṁvarta* acc. to Par. M. III. p. 23, *Hārta*, acc. to S. V. p. 72). The *sabhā* is said to have ten *angas*

368. प्रतिष्ठिता दूरे ग्रामे नामाग्रामेऽप्रतिष्ठिता । मुद्रिताऽप्यसंयुक्ता राजयुक्ता च शासिता ॥ बृहस्पतिः q. by अथर्वकः p. 600; राज. र. p. 20 ascribes it to हारीत.

369. माल्यभूषणनौषेणी श्रीजालसमन्वितान् । प्रतिमालेखपद्मैश्च युक्तमण्डपभूषणतया ॥ इह. in राजधर्मकाण्ड p. 30, स्तुतिच. II. p. 19. and स्प. नि. p. 3. It is probably such a hall decorated with statues and pictures that is referred to in the play *Kundamālā* (p. 10) 'कुन्दमालिकाः प्रतिमालो नृहराजः' (in Prākṛit), in which some scholars find a reference to the play called *Pratimā*, one of the *Trivandrum* plays. अधिकरणमण्डपगतैश्चादिभैरवपुत्रदेवनागनोपस्थितैर्धर्मपदैरिव धर्माधिकारिभिर्महापुङ्गवैरपिष्ठितम् (राजकुलम्) । कातुन्वरी para 83.

370. नास्तिकाभिरहरदया राज्ञि च विमजेत् । ... द्वितीये पौरजानपदानां कार्याणि पश्येत् । अर्थशास्त्र I. 19; आषाढहोत्रमाषाढपूर्व मागवसे भवेत् । स कातो भवहारस्य शास्त्रहोत्रो ननीयिषिः ॥ कात्या. q. by अथर्वकः p. 601, स्तुतिच. II. p. 27. स. नि. p. 72.



by Br.<sup>371</sup> viz. the king, the chief judge appointed by him, the sabhyas, amṛti, gaṇaka (accountant), lekḥaka (the scribe), gold, fire, water and *śvapuruṣa* (a bailiff, otherwise called *sādhya-pāla*). The chief judge declares (the law), the king awards punishment, the sabhyas examine the dispute, amṛti (dharmasāstra) lays down the rule of decision, the success (of one party or the other) and the punishment; gold and fire are required for taking oaths, the water is for man when they feel thirsty, the gaṇaka counts the wealth or subject matter of dispute, the scribe writes down the pleadings, depositions and the decision, the *puruṣa* summons the sabhyas, the defendant, the witnesses and he guards the complainant and the defendant when they have furnished no surety (for appearance). It is further said that of these ten *angas* (limbs) the king is the head, the judge the mouth &c. Acc. to Br. (q. in Par. M. III. p. 30) and Śūkra IV. 5. 43 the accountant and the scribe were to be proficient in grammar, lexicography and counting, were to be pure (in character) and conversant with several alphabets. *Puruṣa* was called *sādhya-pāla*, who was to be hereditary, strongly built, a śūdra and obedient to the sabhyas (Vyāsa in Par. M. III. p. 30, V. P. p. 31). The ten *angas* enumerated above (viz. king &c.) are respectively identified with the head, the mouth, the arms, the hands, the thighs (gaṇaka and lekḥaka), the two eyes (gold and water), the heart, feet (Br. in V. P. p. 31, Hārta in Rāj. R. p. 20). In the Hall of Justice the king faces the east, the sabhyas, the accountant and the scribe respectively face the north, the west and the south (Br. in Par. M. III. p. 35, Vyavahārasāstra p. 25). Omitting the king and the chief judge the *sabha* is said to have eight *angas* in certain works (e. g. S. V. p. 72). The chief justice, the sabhyas and the learned brāhmaṇas were probably elderly people, as great emphasis is laid on this by Nār. (III. 18) and Udyogaparva 35. 58 'that is not a real *sabha* where there are no elderly men &c.'<sup>372</sup>.

371. *हृषाधिकृतमन्त्राद्यं स्मृतिर्यजुर्वेदोक्तः। विमलमन्त्रस्वयं हृषाः साधनाद्वानि वै दृष्टः। ... यथाध्यासी हृषः शास्त्रा मन्त्राः कर्तुं परीक्षकाः। स्मृतिरिति निर्णयं कृते यथादानं दत्तं तथा। हृषाध्यासी हिरण्यवासी अन्तु वृषितजस्तु। राजको मण्यवर्धुर्लियेन्मन्त्रां च लेखकः। हृषाधिकृतमन्त्रं माक्षिणां च स्वयं हृषः। हृषाद्विप्रको रत्नद्वयमप्यभिनी सदा। इहस्पति q. in अपराक p. 600, स्मृति- II. p. 20, वरा. मा. III. p. 31; राज. र. (pp. 20-21) attributes these to Hārta. Vide Śūkra IV. 5. 38-42 for the verses up to लेखकः.*

372. *य सा सभा यत्र न सन्ति वृद्धा वृद्धा न ते ये न वदन्ति धर्मं; न सो धर्मो यत्र नो सारयमसि न सारयं यच्छलेनामुषिष्यम्।* नारद. III. 18 = उद्योगपर्व 35. 58 (reads यच्छलेनामुषेयम्). Acc. to a verse quoted from the राजधर्म by the भाष्य on सरपा. श्री. च. a *sabha* is of three kinds: समस्तु तिष्ठो विज्ञेया धर्मस्वेका च कर्मणः। तथा राजसभयेत विज्ञेयः परिकीर्तिताः। The first (धर्मसभा) dealt with स्वयं हृषा and प्रायश्चित्त, the 2nd (कर्मसभा) was a hall where sacrifices were performed and the 3rd (राजसभा) was the royal *darbar* attended by brāhmaṇas, warriors, royal officers and servants.

In the drama *Mṛcchakatika* (Act IX) we have a graphic, though brief, description of judicial procedure in ancient India. That drama is at least as old as the 4th or 5th century A. D. It is very instructive to compare the procedure described in it with that gathered from Nar., Br. and Kāt. who constitute the leading triumvirate on law and procedure in the *śmṛtis* and who probably flourished a little before and a little after the drama. It will be found on comparison that the procedure in the drama is in essentials the same as that of the three *śmṛtis* mentioned above, though there is some difference in minor details. The principal points in the drama bearing on judicial administration may be brought together here at one place. The court house was called 'adhikaraṇa'; the chief judge was called 'adhikarapika'; he was assisted by the *śreṣṭhin* (a prominent merchant or banker) and a *kāyastha*; all three are referred to as 'adhikaraṇabhōjaka' and are addressed as *adhikṛta* or *niyukta* (appointed by the king); when a despot was on the throne, the judge's position was precarious and he could be deprived of the post at the king's sweet will (the Śākara, king's brother-in-law, threatens the chief justice with summary dismissal). There was a servant who arranged the seats in the court, inquired whether there was any litigant, summoned Vasantasenā's mother and Cāradatta (this man corresponds to the *puruṣa* or *sādhyapāla*); inquiry was made by the judges as to whether any one wanted to file a suit or complaint; the *śreṣṭhin* and *kāyastha* are asked by the presiding judge to write down the important parts of the complainant's statement; a private person (who was not a relative) could complain to the court about an alleged murder; the judge allowed an old person like the mother of Vasantasenā and a respectable and well-known citizen like Cāradatta to occupy a seat when replying to questions from the court, but Cāradatta was deprived of this concession when a *prima facie* case was made out against him; the court-house (being probably situated near the palace) had near it *mantriṇs*, *dūtas*, spies, an elephant and a horse (and the chief of the city police is asked to ride the horse and find out whether the corpse of a woman lay in the public garden), and *kāyasthas*; Cāradatta was called upon to state the truth and the judge tells him that in the court no trick (*chala*) will be allowed to pass;<sup>373</sup> when a strong case was

373. Compare छलं निरस्य दूतेन जयवाराहपेन्द्रपुत्रः । वाङ्. II. 19; दूतचल्लङ्घना-  
रित्वाहं द्विमतिः समुदाहृतः । नारद I. 29; न तु सिद्धं छलं राजा मयिदृजमसाधनः । दूतमेव  
अप्येत धर्ममुदा यतः शिवः ॥ नारद I. 31.



made out against Cārudatta by circumstantial evidence he was asked to confess his guilt, otherwise he was told that he would be whipped (i.e. this refers to whipping to extort a confession, vide above note 332); the judge was only to pronounce the judgment and recommend the legal punishment, while the king had the last word about the exact punishment; Manu's work was an authority; a brāhmaṇa offender was not to be sentenced to death, but was to be banished with all his wealth, though some kings did not act up to this rule; impalement was carried out by cāndālas; ordeals of fire, water, poison and balance were known and Śūdraka conveys (*viśasahatātulāgniprārthite me vicāre*) that Cārudatta had prayed for trial by ordeal, but that the chief justice, because there were witnesses and circumstantial evidence, refused that request.

The court so far described (i.e. where the king or the chief justice appointed by him presided) was the highest court. But other tribunals were recognized in the *smṛtis* and digests. Yāj. I. 30 and Nār. (I. 7) state<sup>374</sup> that law-suits may be decided by village councils (*kulāni*), corporations (*śreṇi*), assemblies (*pāṇa* in Yāj., *gaṇa* in Nār.), the judges appointed by the king and the king himself, each later one being superior to each preceding one. The first three were practically arbitration tribunals like the modern *panchajuts*. The several words here require explanation and they have been differently interpreted by different digests. Medhātithi on Manu VIII. 2 explains these words at great length. Acc. to him 'kulāni' means 'group of relatives' and also (acc. to some) 'impartial persons' (*madhyasthapuruṣāḥ*) and 'gaṇa' means 'builders of houses and mansions or brāhmaṇas dwelling in maṭhas'. Acc. to the Mīt. and V. P. p. 29 'kulāni' means 'an assembly of the relations, agnatic and cognatic, of the litigants'; acc. to the Sm. C. it means 'the agnates of the parties'; acc. to Aparārka it means 'husbandmen'. It appears likely that 'kulāni' means officers who presided over a group of eight or ten villages and who were granted the produce of one *kula* of land as their salary. Vide Manu VII. 119 and Kullāka thereon and Dāmodar-pur plate of Gupta year 124 in which the head of the district (*viśayapati*) is said to have been assisted by the *nagaraśreṣṭhin*, *prathama-kulika* and *prathama-kāyastha* (E. I. 15 p. 130) and

374. कुलानि श्रेणयश्चैव गणभाषिकृतो नृपः । प्रविष्टा स्ववहाराणां सुर्वेवस्तुषो-  
कसम् ॥ नारद (I. 7).

'grāmāṣṭa-kulādhikāraṇam' in E. I. vol. 17 p. 345 at p. 348 in the reign of Ku māragupta I. From the Sanchi stone Inscription of Chandragupta II (of the Gupta year 93 i. e. 412-13 A. D.) it appears that *panchayats* were called 'pañcamandalī' (Gupta Inscriptions pp. 29, 31). 'Śreṇī' means, acc. to most commentators, 'the corporation of persons following the same craft or avocation', though they may belong to different castes' such as horse-dealers, betel-leaf sellers, weavers and dealers in hide. Acc. to the V. M. p. 230, 'śreṇī' is an association of artisans or traders'. 'Pūgas' are assemblies of men of one place (a village or a town) belonging to different castes and following different avocations. Kat. (225 and 682) distinguishes between *paga* and *pūga* which he respectively defines as 'assembly of families' (*kulas*) (Sm. C. II. p. 18, Par. M. III. p. 352) and 'assemblies of traders and the like' (V. R. p. 668). V. P. p. 30 says *paga* and *pūga* are synonyms. The king was thus the highest court of appeal and next to him was the court of the judges appointed by him. Brhaspati (S. B. E. vol. 33 p. 281 verse 28) ordains<sup>375</sup> that the *kulas*, *śreṇīs* and *ganas* that are well-known to the king may decide the disputes of litigants except those that fall under *sāhasa* and that it was only the king who could carry out the order for fines or corporal punishments, i. e. the arbitration courts could only decide disputes not involving *sāhasa* and they had no power to execute their decrees about fines and corporal punishments, but that their decisions had to be filed with the king, who, if he did not disapprove of them, put them into execution. Pītāmaha<sup>376</sup> appears to mention three classes of State courts, while Yāj. and Nār. refer only to two (viz. that of the chief justice and that of the king himself): 'a dispute decided in a village may be taken to the city and one examined in the city (court) to the king; a dispute decided by the king whether correctly or incorrectly cannot be reviewed.' It is distinctly

375. वाग्दण्डो विद्वत्सर्वत्र विपाकसाधुर्भी सुतौ । अर्धदण्डव्यादुको राजावसाधुभा-  
वति । राजा ये विद्विताः सर्ववकुलभोजिण्यादयः । साहसम्वागवर्णानि कुर्षुः कार्याणि ते  
व्यादयः ॥ इह. in स्मृतिच. II. 20, वरा. मा. III. p. 32, म. वि. p. 68, अप. मा. p. 22.  
For the first, vide सूत्र IV. 5. 279 and the second is सूत्र IV. 5. 30 which reads  
साहसस्तेष्ववर्णानि.

376. ग्रामे हुहः पुरे वापातपुरे दण्डस्तु राजनि । राजा दण्डः कुतुली वा नास्ति तस्य हुह-  
भेदः ॥ विनायक in स्मृतिच. II. p. 19, वरा. मा. III. p. 42.



provided by Br.<sup>377</sup> (S. B. E. vol. 33 p. 282 verse 31) that the *sabhyas* are superior to the *kulas* and the rest, the chief justice is superior to *sabhyas* and the king is superior to all. *Pitāmaha*<sup>378</sup> provides that when a litigant is not satisfied with the decision given by a *kula* tribunal or the others, he can carry the matter by way of appeal to the king. Besides these courts it appears from Kautilya that the village headman (*grāmika* or *grāmakūṭa*) exercised certain summary powers such as driving out of the village a thief or an adulterer (III. 10) and that he could try some offences (IV. 4, *grāmakūṭamadhyaḥṣam vā satrī brūyāt* &c.). Even in the 20th century in the Bombay Presidency under the Village Police Act (Bombay Act VIII of 1867) the village headman (called Police Patil) has the authority to try and on conviction to punish with confinement for a period not exceeding twenty-four hours any person charged with the commission of petty assault or abuse within the limits of a village and the person convicted has no right of appeal to any court or magistrate against such conviction and only the High Court has the power to entertain a petition for revision (which it hardly ever does). *Bhṛgu*<sup>379</sup> quoted in Sm. C. II. p. 18 and other digests says that there are ten tribunals common to all men viz. the village people, the assembly of the citizens of the capital, *gana*, *śreṇī*, men learned in the four *vedas* (or *vidyās* viz. *śāvikṣiki* and the rest), the *sargans*, *kulas*, *kalikas*, judges (appointed by

377. विचार्य भेलिभिः कार्यं कुलैर्वैच विचारितम् । यत्तैश्च भेदवदितवान् यथाज्ञातं निवृत्तकैः । कुलादिभ्योऽधिकतः सम्पत्तौ न्योऽपहोऽधिकः कुतः । सर्वेषामधिको राजा धर्मं दानेन निश्चितम् । बृह. in स्व. म. p. 30. बृह. IV. 3. 32 has the last verse, the last pāda being धर्माधर्मनिर्णयकः. The स्व. म. p. 30 explains: कुलादीनां ज्ञात्यादिकृतानां वृक्षिण्यादिनाम्नवाद्दर्शनमपि संनाम्नते... । भेषीनाह्वयमीयतया ततो यत्तवचः । वृक्षानां नेकरथानवाप्तनामसम्पत्तेषु मित्रजातितया भिक्षवृत्तितया च ततोऽपि मिथोऽभेदोऽस्वा-दीक्षास्वाह्वयवचम् । वृषाधिकृतानां ततोऽपि निःसम्पत्तयया राजा परीक्षयाधिकृतानां राजमवादिषु वसराह्वयक्षिण्याधर्मवच इति पूर्वेष्वो यत्तवचस्त्वम् ।

377a. कुलादिभिः कृतं कार्यं विचार्य तद्यथोक्तम् । असन्तुष्टस्य कार्यस्य यागवाजा कृतं भवेत् । विज्ञानम् च. by स्व. नि. p. 15.

378. दश स्थानानि वादुःखी यज्ञ चैवामरीहृष्टम् । निर्वर्ण्य देन वसन्ति विवादे यागवादिनः । आरण्यस्तु रणेः कुर्वी सार्थिकाः सार्थिकेस्त्वया । सैनिकाः सैनिकैरेव ग्रामेऽप्युभयवासिनः । उभयाभ्युदये चैव बृहते स्थानमस्मिन् । कुलिका सार्थिकुरुषाश्च वृक्षामनिवासिनः । ग्रामपौरगणभेदव्यातुर्विद्यश्च वर्मिणः । कुलानि कुलिकायैव निवृत्ताः वृषलिस्तथा । बृह. q. by स्मृतिच. II. p. 18, परा. मा. III. p. 24, म. वि. p. 67 (summary in prose), स्व. म. pp. 8-9. 'कुलिकाः केचनाधिगोत्रा इत्याः स्मृतिच.', 'कुलिकाः कुलभेदाः' स्व. म. p. 9; 'सार्थिको ग्रामवासादौ मिलितो जन्मसङ्घः । वृक्षया ग्रामवासादयः' परा. मा. III. p. 25; 'सार्थो ग्रामदेशवासादौ मिलितो जनसङ्घः सन्तुक्रयाः सार्थिकवादायः.' स्व. म. p. 9. It should be noted that here कुलानि and कुलिकाः are separate tribunals.

the king) and the king himself. The *varṅins*<sup>379</sup> are the groups of various kinds such as *gāpas*, *pūgas*, *vrātas*, *śreṇis* and others. *Kulikas* may be the elders of the families of the plaintiff and the defendant. In the Dāmodarpur plates (E. I. 15 p. 130) we come across one Dhṛtimitra who is described as 'prathamakulika'. The word 'pañcakula' was applied to certain high officers in Gujarat and Kathiawar; vide I. A. vol. 11 p. 220 (Abu Ins. of Bhīmadeva dated Vikrama year 1265) and Tawney's translation of the Prabhāṇḍa-cintāmaṇi pp. 18, 84, 129, 149, 190 for 'pañca-kula'. The provisions about the conflict between customs and usages on the one hand and *śruti* and *smṛti* on the other will be dealt with in detail later on in another section. A few words may be said here about conflicts between *smṛtis*. In disputes between residents of the same country, the same city or the same hamlet or of cowherds or of the same capital or village, the decision should be according to their own conventional usages, but in disputes between these and others (who are not residents of those respective places) the decision must be in accordance with the sacred texts<sup>380</sup> (Kat. 47 q. in S. V. p. 72, Par. M. III p. 41). Another rule is that when there is an apparent conflict between two *smṛtis*, reasoning is to decide in ordinary life which should be followed or reasoning based on the actions of the aged and the experienced is to decide what text to follow (Yāj. II. 21) and the business of the interpreter consists in holding that one of the *smṛtis* contains a general rule and the other an exception or that the two apply to different sets of circumstances (*viśaya-vyavasthā*) or that an option may be intended. Voluminous glosses have been written on this one text of Yāj. II. 21 right from Viśvarūpa in the 9th century downwards. Another rule is that in the administration of justice dharmaśāstra rules have superior force to those of arthaśāstra. This has been already referred to above (p. 9). Bhṛgu further provides that foresters may get their disputes settled by foresters, members of caravans by other members, soldiers by (a tribunal of) soldiers and those who stay in a village as well as in a forest may get their disputes settled either by villagers or by foresters by mutual

379. मनाः पाषण्डपुत्राश्च ज्ञाताश्च भोजवस्तथा । अनुदरपात्रं च खान्दे दगर्हणास्ते  
बुधस्ततिः ॥ कात्या. q. by स्मृतिच. II. p. 18, स. वि. p. 67; यामात्यमेव च वेदे न बह्वि  
कुटुम्बः । तेषां बीजहर्षदीनां पाषण्डाकृता ज्ञातव्ये ॥ बह्विज्जन्मत q. by स. वि. p. 15.

380. वेदप्रमाणोऽपि दुर्ग्रामेषु बाह्याम् । तेषां स्वमतैर्धर्मज्ञाकर्तव्यैः सह  
कात्या. q. by बरा. स. III. p. 41, स. वि. p. 72. स्मृतिच. II. p. 26 appears to  
be similar to विग्रहः.



agreement and that the five tribunals for foresters and others are *kulikas* (high officers or heads of families), *sārthas* (members of caravans), headmen, villagers, citizens. The texts further provide that in certain cases the court was to call in aid outsiders to help in deciding disputes. Vyāsa<sup>381</sup> says: 'In the case of disputes among traders, artisans, husbandmen and actors it is impossible for others to give a (correct) decision; hence such matters should be got decided by experts in those various matters'. Br. states that in disputes among husbandmen, craftsmen (carpenters and the like), artisans (like painters), money-lenders, guilds, dancers, sectarians (like Pāsupatas) and criminal tribes the decision should be made with the help of those who understand the conventions made by them and their usages. In disputes about the boundaries of villages and about fields in a village, four, eight or ten neighbours were to settle the boundaries (vide Manu VIII 258, Kauṭ. III. 9, Yāj. II 150-152). Kauṭ. I. 19 and Br.<sup>382</sup> (q. in V. P. p. 23) say that disputes between those who have performed austerities or between those who are adepts in witchcraft and Yoga should not be decided by the king (unaided), but with the help of those learned in the three Vedas, as otherwise they may feel offended. These quotations show that certain people could claim to be tried by their peers or at least by a jury. This jury system was resorted to for settling complicated questions of fact. It is a very ancient system, being mentioned even by Gautama<sup>383</sup> XI 21-22 'the king, having received help from the heads of husbandmen, merchants, cowherds, money-lenders and artisans as regards disputes in their own groups, should finally decide what is just'.

It has already been stated above that the king is to decide according to the *smṛtis*. He has also to take into consideration the duties and usages of the several *varnas* and the eighteen low

381. वणिक्शिल्पिवन्निषु कुपरिज्ञोपजीविषु । अग्रवर्षी निर्णयो ह्यग्वैतदीर्घैरेव कारयेत् ॥ यथा quoted in दश मा. III. p. 42. स्प. द. p. 23; कीमताः कावकाः शिल्पिकुलीदिभेदिसर्तकाः । तिष्ठिनास्तकाराः कुर्षेः स्वेन वर्गेन नियम्य ॥ बृहस्पति, quoted in स्प. द. p. 23. This is सुक IV. 5, 18.

382. तपस्विनां तु कार्याणि त्रैविध्यैः सह कारयेत् । साधकोपविदो चैव स स्वयं कोष-कारणान् ॥ कौटिल्य I. 19 towards end. बृह. in स्प. द. p. 23. स्प. मा. p. 281 ascribes it to both बृह. and कारवा.

383. कर्षक-वणिक्-वस्तुपाल-कुलीनि-कारवाः स्वे स्वे वर्गे । तेष्वेव वधाधिकारमर्थाभ्यास-वस्तुव समीपवरा । गौ XI. 21-22.

castes<sup>384</sup> (acc. to Manu VIII. 41 and Harita). The eighteen low castes said to be outside the pale of the four varnas and āśramas are enumerated by Pitāmaha, viz. washerman, shoe-maker, nata (dancer caste), bamboo-worker, Baheriman, mleccha, bhilla, ābhira, mātanga and nine others (the names of which are not given here as the text is corrupt).

The foregoing gradations of tribunals did not all exist at all times in ancient and medieval India. One thing is, however, quite clear. There was always a court of the Chief Justice appointed by the ruling power and final appeal lay to the ruler himself. But as regards inferior tribunals usage varied. For example, it appears from a decision of 1742 in which a ruling of king Shivaji about a Kulkarni *valm* is set out that in Shivaji's time disputes could be taken before three different but inferior tribunals, viz. the *got* (i. e. the assembly of castemen) which is somewhat like the *kula* tribunal of the surtis, or before arbitrators hailing from a place other than where the dispute took place or before the officers, *talukedars* and chief men of several villages round about.<sup>385</sup>

Manu (VIII. 23) prescribes that the king fully dressed and with an undisturbed mind, after taking his seat in the Hall of Justice, should perform obeisance to the gods, the guardians of the (eight) quarters (Indra and others, as specified in Manu VII. 4) and should then commence the work of looking into the legal business. The transaction of legal business has four stages (from the king's or judge's point of view) viz. first receiving information from a person, then finding out under what title of law (*vyavahārapada*) the information falls, then consideration of the pleadings of the parties and the evidence

384. शास्त्राणि वर्णधर्मस्तु मनुजीनी च भूयतिः । व्यवहारस्य च ज्ञातवा तत्सर्वमाचरेत् । हारीश in स्मृतिच. II. p. 29, परा. मा. III. p. 46. स. वि. p. 74 । मनुजयः पितृमहान् वृत्तिमाः । राजकर्मकाश्च नदो वृद्ध एव च । कैवल्यश्च विज्ञेयो म्लेच्छभिर्हीतयैव च । ... एताः मनुजयः योका अवापुश्च नवीपिभिः । वर्णानामाभमाणा च सर्वदा तु वतिः स्थिताः । स्मृतिच. II. p. 29, परा. मा. III. p. 46.

385. Vide 'Vatapatreṇ, Nivāḍapatreṇ' edited by Memars Mavji an Parasania (1909 A. D.) in Marathi p. 12 at p. 18 'मदराह योरांच्या तकरिस मनास आणुन योरा वादिपस मंडले कीं तुम्हा मोरास राजी अनाल तर मोरास पावतु अगर परस्परास राजी अनाल तर परस्परास पावतु अगर हगडाई मारीचे मोकदम व मोखडेसर व मोजे मजकुरचे मोकदम व बारा बहुते वासी राजी अनाल तर मोजे मोखिचन मनसुकी कसन जे मोठी तुम्हास मानली ते सांगेलें.'



led by them and lastly the decision.<sup>386</sup> When a litigant comes before the court at a proper time (i.e. when the court is sitting) and makes his bow, he (the king or judge) should<sup>387</sup> address him as follows:—"What is your business? What is the injury done to you? Don't be afraid, speak out, man! By whom, when, where and why (was the injury caused)? When thus asked whatever he replies should be considered by (the judge) with the *sabhyas* and *brāhmanas* and if the matter be legally entertainable he (the judge) should deliver the seal (sealed order) to the plaintiff or order the bailiff to summon (the defendant)". These observations are made by *Kat.* (86-88). Whatever a man, being excited by one of the emotions of love (or anger or greed), says before the court, should be first written down on a board or the like by the scribe (*Nār.*<sup>388</sup> II. 18).

Very elaborate rules are laid down about the summoning of the defendant or accused by *Nār.* (I. 52-54), *Bṛ. Kat.* (96-100), *Sūkta* (IV. 5-102-106) and others. A few of the rules are set out below. The first person to be summoned is the one against whom a complaint based on suspicion or truth is made by the plaintiff or complainant. But other persons may be called as defendants<sup>389</sup> either when the person proceeded against by the plaintiff puts forward another as liable to plaintiff's claim or makes another liable along with himself or when another person is accepted by the plaintiff (on behalf of another who is a minor &c.) or (acc. to the *Madanaratna*) another person himself comes forward (as defendant). The king should not require the personal appearance of the following persons: the diseased, minors, very old (beyond 70), one in a calamity, one engaged in some

386. अथवाः पथेन कार्थो व्यवहस्यतः ततः । चिकित्सा निर्वपथैव दूरेन स्वावृत्त-  
विषम् ॥ नारदः (I. 36). For explanation, vide स्मृतिच. II. p. 29, स. वि. p. 75.

387. काले कार्थोपितं पृच्छेन्नर्णं पुरतः स्थितम् । किं कार्यं का च ते पीडा ना भेदी-  
र्भं हि मानव ॥ केन कालिगृहदा कर्मावृत्त्यर्थं सभागतम् । एवं पृष्टः स वद्वृणात् तस्मादे-  
वाङ्मनो स ह । विद्वत्प कार्यं न्यारदं चेदाह्वानार्थमतः परम् । सुदा वा निक्षिपेपरिमन्त्रयुक्तं वा  
समादिशेत् ॥ काश्या. q. by मित्र. on वा. II. 5, परा. म. III. 52 and 53, स्मृतिच. II. pp. 31, 32. The words किं कार्यं refer to a civil dispute and का च ते पीडा to a criminal dispute ( हिंसासूत्र ).

388. रागादौर्भा पद्देशेन कोपितः कार्यं वद्वत् । तदादौ तु लिखेत्तर्कं वादिना कल-  
काविष्णु ॥ नारदः (II. 18).

389. अधिकारोन्निवृत्तस्य नेतरस्यास्तत्सङ्गतेः । इत्यरोपमिषुकेन प्रतिरोधीकृतो मतः ।  
समर्पितोऽपिना योग्यः परी धर्मादिकादिभिः । प्रतिवादी स विज्ञेयः प्रतिपक्षश्च चः स्वयम् ॥  
काश्या, quoted by अपराज् p. 639 (तस्मात्प्रतिपक्षो मतः), स्मृतिच. II. p. 32, स. वि. p. 80.

religious rite, one who would suffer irreparable loss by coming, one in misfortune (such as the death or disappearance of a dear relative), one engaged in the king's business or in a (religious) festival, one intoxicated, a lunatic, one distressed, a servant, a woman<sup>390</sup> who is young and whose family is in straitened circumstances or who is of good family or who is recently delivered, a maiden who is of a higher caste than that of the complainant. Nār. (I. 53) prescribes that cowherds when it is the season for taking cows for grazing, agriculturists in the sowing season, artisans actually engaged in work and soldiers engaged<sup>391</sup> in war should not be summoned to appear in person, while so engaged. In these cases some one on their behalf should be summoned as a representative. But it is provided that even these persons may be summoned with proper safeguards in important cases or grave charges, such as the killing of human beings, theft, rape, eating forbidden food, counterfeiting coins, high treason &c. But women who by their earnings support their families, unchaste women, prostitutes, women without family and women excommunicated for grave sins may be summoned to appear personally<sup>392</sup>. A person who is summoned and is able to appear but does not appear in person was to be fined according to the value or importance of the subject matter of dispute e. g. in slight causes fifty (copper) panas, two hundred at least in the cases of middling value and 500 panas at least in heavy causes (vide Kāt. 100-101 quoted by Sm. C. II. p. 34, Aparārka p. 607.) After taking the fine and waiting for 30 days or a month and a half the king may give a judgment in favour of the plaintiff, due to defendant's default. But if the defendant does come after that time, the suit may be restored and proceeded with.<sup>393</sup> But when there is an invasion by an enemy or a famine or an epidemic or disease the king should not impose a fine, but send a second summons. In the case of those who are exempted from personal appearance (as above) their relatives (son, father &c.) or some other person

390. Compare sec. 132 of the Indian Civil Pro. Code (Act V of 1908) for exemption of certain women from personal appearance.

390a. Compare the Indian Soldiers (Litigation) Act (IV of 1925).

391. Vide Mit. on Yāj. II. 3 (for quotations about most of these rules), Aparārka p. 606, Par. M. III. p. 51, Vyavahāra-mayekha pp. 9-10.

392. एवं दण्डमादाय विजडावाहुरै विपलाद्वावेक्षणार्थं (विपलाद्वा दण्डकम्?) वृद्धिना शान्तिनिमित्तजपपत्रं दद्यात् । एवं कृते यदि नलिवाद्यामन्त्राणि पुनरपि व्यवहारदर्शनं कर्तव्यमिति । द. नि. p. 29.



appointed by them (such as a pupil, servant &c.) or one who can be recognised as their agent may be allowed to appear.<sup>392</sup> But no representative was allowed in serious charges cited above (vide Kat. 93-95 q. by Aparārka p. 639, Sm. C. II. p. 34). If a father, brother, a friend, or a relative appears before the court for the real litigant, the law-suit may be proceeded with (Pitāmaha). Whoever carries on anything through another by appointing him to that task should be understood to have done it himself and the business transacted by such a representative or agent cannot be annulled. If a person who is not a brother nor father nor son nor appointed to represent another prosecutes a law-suit for another, he is liable to be fined<sup>393</sup>. As the king was supposed to be the guardian of a minor's wealth, it appears from this that a king could have appointed a guardian for the suit when a minor was concerned. The above provisions show that maintenance and champerty were not encouraged by ancient Hīndu lawyers.

An interesting question arises whether lawyers as an institution existed in ancient India. The answer must be that so far as the smṛtis are concerned, there is nothing to show that any class of persons whose profession was the same as that of modern counsel, solicitors or legal practitioners and who were regulated by the State existed. This does not preclude the idea that persons well-versed in the law of the smṛtis and the procedure of the courts were appointed (*nigūkta*) to represent a party and place his case before the court. The procedure prescribed by Nār. Br. and Kat. reaches a very high level of technicalities and skilled help must often have been required in litigation. In the com. of Asahāya as edited by Kalyāṇabhaṭṭa on Nār. (pādāna 4) there is an instructive story from which it appears that persons who had studied the smṛtis helped parties in return for a monetary consideration to raise contentions

392a. कुलबीवालकोनसजहानां च वाग्धराः । पूर्ववाकोचरे कुर्बुनिपुक्तो धृतक-  
स्तथा ॥ q. by विशदचन्द्र p. 89, यव. द. p. 201: अग्रजमजहोमनकुलबीवालरेमिनाम् ।  
पूर्वोत्तरं वदेहृन्धुनिपुक्तोऽप्योपमा नरः । इहस्पति q. by स्मृतिच० II. p. 33, यद. व.  
p. 40: इत्याः कर्मकराः शिष्या निपुक्ता वाग्धरास्तथा । नादिनो न च हज्जवाः स्तुर्पसव-  
नोऽग्नः स दण्डमाह । कात्या. quoted by अपराक्ष p. 639.

393. पिता भ्राता सहस्रादि बन्धुः सम्प्रधिनोपि वा । यदि कुर्बुरपरमानं वादे तत्र  
यवमयेत् । यः कश्चिकारयेत्किञ्चिद्विषयोवादेन केनचित् । तस्मैच कुर्बु ज्ञेयमनिवार्यं हि तत्  
स्वतन्त्रं । पितानहं ॥ स्मृतिच० II. p. 32; these are सूत्र IV. 5. 112-113; यो परवार्यं  
विषयते तपोर्जवपराजयो । यो न भ्राता न च पिता न कुर्वो न निषोमहन् । परार्यवादी दण्ड्यः  
स्पाह् ॥ यवमारेपि विबुधम् । नारद (II. 22-23). This is सूत्र IV. 5. 118.

before the court. But there also the helper comes forward saying that he is a very old friend of the family and has been appointed by the party to represent him. So he corresponded to what is called a recognized agent in the Indian Civil Pro-Code, Order III r. 2 (Act V of 1908). In Sukra IV. 5. 114-117 some important rules are given:<sup>394</sup> the person who is appointed to represent a party should get as his wages 1/16, 1/20, 1/40, 1/80 or 1/160 part of the amount in dispute, that the wages become less and less as the claim in dispute becomes higher or if several persons employ one representative; one who knows *dharmasāstra* and the procedure of law-suits should be appointed as representative and not any one who is deficient in these; if the representative takes wages without knowing these he should be punished by the king. A representative is to be appointed by the party and not by the king at his will; if the representative allows the matter entrusted to him to fail owing to his greed he is liable to be fined<sup>395</sup>. In the 'Questions of Milinda' (S. B.

394. निधोमि (नि!) त्वयापि धृतिं विवादाद् बोद्धव्यमितीह । विवादांशो तदर्थो वा तदर्थो वा तदधिकारम् । यथा व्यापारिकं कार्यं हीना हीना धृतिरुपधा । यदि बहुनिधोमी स्वाद्वन्धया तस्य पोषणम् । धर्मज्ञो स्ववहारज्ञो निधोक्तयोऽप्युपधा न हि । अन्यथा धृतिं यद्वर्त्तन् दण्डयेन्न निधोमिन्नम् । कार्यो निधो निधोमी न क्षुपेण स्वमनीषया । होमेन तस्यथा कुर्वन् निधोमी दण्डमर्हति । सुक्र IV. 5. 114-117. The words धृतिं यद्वर्त्तन् present a difficulty. Probably there is a compound of धृति with यद्वर्त्तन्.

395. The story in the com. on Nār. is as follows: In Pāṭaliputra (modern Patnā) a brāhmana named Śrīdhara acquired with great trouble a fortune and lent to a trader named Devadhara ten thousand *drammas* at the rate of 2 per cent per month. When one month passed Devadhara paid an interest 200 *drammas*. When the 2nd month was running, Devadhara died of high fever, his son died of cholera and only the great-grandson of Devadhara, by name Mahidhara, remained. He was a very young man addicted to gambling and other vices. His property was taken under their protection by his maternal uncles. They were advised by a brāhmana who had a smattering of smṛti lore and was called Smārtadurdhara 'Don't pay even a rupee to the creditor Śrīdhara. I shall save you even in Court by citing appropriate texts.' The uncles replied 'if you save us, we shall give you a thousand *drammas* as a reward'. When the 2nd month passed (from the date of borrowing), Śrīdhara called upon the uncles to pay 200 *drammas* as interest for the 2nd month. They replied 'You cannot claim even the principal (from the great-grandson of the original borrower), much less interest'. Smārtadurdhara, the legal adviser of the uncles, said "Nārada declares (ṛgādhāna +) 'grandsons should pay the debts of the grandfather; that (debt) ceases from the fourth'. On hearing this Śrīdhara was stunned, but gathering his wits filed a suit in the court and had summonses issued

(Continued on the next page)



E. vol. 36 p. 238) there is a passage about certain *bhikkhus* in the 'city of Righteousness' (*dhammanagara*) who are styled 'dhammāpanikas' (dealers in dharma) and are described as follows: '(Bhikkhus), who in the spirit and the letter, in its arguments and explanations, its reasons and examples teach and repeat, utter forth and recapitulate the ninefold word of the Buddha; such bhikkhus are called, O king, lawyers in the blessed one's city of Righteousness' and on p. 239 there are 'dhammasettḥino' (bankers of dharma), which word reminds us of the *śreṣṭhin* in the *Mṛcchakaṭika*. The dhammāpanikas probably correspond to such lawyers as *Smārtadurdhara* mentioned above. The rules of Śukra make a near approach to the modern institution of the Bar and the fees prescribed by Śukra are similar to those allowed by the Bombay Regulation II of 1827 and by Schedule III to the Bombay Pleaders' Act (Bombay Act XVII of 1920). The first legislative enactment in India to deal with lawyers for representing parties passed by the British Government was the Bengal Regulation VII of 1793 which defined the privileges, the fees (five per cent up to 1000 and then on a sliding scale) and responsibilities of *sukeels* (which word originally means 'agent').

The plaintiff may put under restraint till the approach of the summoner (the bailiff) by the king's order the defendant, who does not stand up to meet the claim (i. e. is about to abscond or may abscond) that is to be investigated (or when the plaintiff spoke to him about the claim before coming to court) and

(Continued from the last page)

to Mahidhara, great-grandson of Devadhara, and his uncles. Sureties were taken from both sides. The uncles were asked (by the court) 'why don't you pay the interest to Śridhara?' They appointed as their representative *Smārtadurdhara*, who said that he and his ancestors were friends of the family of Mahidhara and so he addressed the court 'I rely on Nārada's words (quoted above), and Mahidhara being the fourth from Devadhara (including the latter) is not liable to pay'. Bhagya *Smārtasekhara* laughed at this and said 'Smārtadurdhara, you are not deeply learned in the *śruti* texts nor have you studied glosses thereon. The whole of the debt of 10000 drammae lent by Śridhara is still due from Mahidhara, as he is the great-grandson of the borrower, as three male descendants of the borrower are liable to pay the ancestor's debt and as Nārada means only this that the son of the great-grandson (who is the fourth from the borrower, excluding the latter from computation) is not liable to pay the debt of his great-great-grand-father' and the learned speaker charged him with having been promised a gratification. *Smārtadurdhara* and his proteges lost the case.

who disregards the words of the claimant. This is called *āsedha* which is explained by the Mīl. on Yāj. II. 5 as restraint under the king's order. It is of four kinds viz. restraint as to (*sthāna*) place (e. g. you are not to go elsewhere from your house or a temple), as to time (e. g. you must present yourself on the 5th of a certain month), restraint from going on (*prajā*) a journey (till the suit is decided) and restraint from doing certain actions (e. g. you are not to sell certain property or to plough a certain field till the disposal of the suit)<sup>396</sup>. The rules about *āsedha* are laid down by Nār. (I. 47-54), Br. (q. by V. P. p. 42, Sm. C. II. pp. 30-31), Kāt. 103-110 (all quoted by V. P. pp. 41-42, Sm. C. II. pp. 30-31). Nār. (I. 54) states that those persons whose personal appearance is dispensed with as stated above are not to be subjected to *āsedha*. Nārada provides that he who disregards the prohibitory order (*āsedha*) of the court should be punished and that he who obtains a restraint order against a person that should not have been thus proceeded against should also be punished. Acc. to Kāt. that man who restrains the defendant so as to prevent him from exercising his limbs or from talking or breathing freely should be punished and not the defendant if he breaks such restraint. A defendant would not be liable to be fined, if he disregards a restraint order which ties him down to a river ford, or to a forest, to a bad place (infested by thieves and tigers) or at the time of an invasion (Nār. I. 49). There is a provision which looks like one for the appointment of a Receiver in modern times. Kāt. (120) says 'A king should not allow a litigant to proceed if the litigant retains the property or money which he has (been shown to have) seized; it should be delivered over to the opposing litigant (if he be trustworthy) or it may be kept with a third person (as receiver for the successful party)<sup>397</sup>. When the defendant comes on being summoned, he and the plaintiff are both to be placed before the judges (Pitāmaha q. in Sm. C. II. p. 34). Then a surety is to be taken from both who would be capable of carrying

396. It should be noted that these provisions about *āsedha* are analogous to those about attachment or arrest before judgment (section 94 and Order 38 of the Indian Civil Pro. Code of 1908) and temporary injunction (Order 39 of the same).

397. दृष्टीतद्वयमो स्वाधो न वक्तव्यो महीभुजा । तस्य वा तत्समस्यै स्वाध्याप्यै वापि परस्व तत् । काला. q. in स्मृतिच. II. 5. 35, विवादसूत्र p. 94, which explains 'अधिपः परधर्मिकमाशो विवादपदमावीकते तदा पातकस्यमिनि मयदर्थे वा न समस्यते तावद्विवादो न वक्तव्यः । दृष्टीतः । दृष्टो दृष्टि वक्तव्ये विवादपदं तद्दृष्टीतं वक्तव्यं दृष्टीतवक्तव्यः । तस्य परधर्मिना कृते (दृष्टे ?) तत्समस्यै परस्व मयदर्थस्य स्वाधो वा स्वाध्यापिरवयः'



out the decree made by the court i. e. who would be able to pay the amount of fine to the king if the defendant denied the plaintiff's claim or who would be able to pay double the amount of the claim if the plaintiff's claim be found to be false (Yāj. II. 10-11). If any one of the parties cannot offer a surety, then he has to be kept in the custody of the court's bailiff (*sādhyapāla*) and has to pay the daily wages of the bailiff at the end of every 5th day (Kāt. 117 q. by Mit. on Yāj. II. 10). The following persons could not be accepted as sureties (Kāt. 114-116 q. by Mit. on Yāj. II. 57): 'the master (in the case of a party being a servant), an enemy, one authorised by the master, one arrested, one fined, one accused of grave sins or offences, one who is a co-sharer in family property, a friend, one who is a perpetual student, one who is appointed to do the king's business, ascetics, one who would not be able to pay the amount decreed and the fine to the king, one whose father is living, one who incites the party for whom surety is demanded, one whose antecedents are unknown.' When a person (of any caste) is kept guarded for want of a surety he is not to be prevented from doing necessary and obligatory acts (bath, *sandhyā* worship &c.) and if he runs away from the guard he should be fined eight *panas* (Kāt. 119 q. in Par. M. III. 58).

When the defendant comes before the court, the information at first given by the plaintiff is to be written down accurately in his presence together with the year, month, fortnight, day, names (of parties), caste &c. (Yāj. II. 6). When the aggrieved party first comes to the court, all that is taken down is the matter in dispute (i. e. the draft of the plaint); when the defendant comes, the plaint is written down with all details (including the grievance as stated in the beginning).<sup>398</sup> The plaint is called by various names in Sanskrit viz. *pakṣa*, *bhāṣā*, *pratyāñā* (Mit. on Yāj. II. 6). Sometimes the word '*pūrvapakṣa*' is used for *pakṣa* (as in Kāt. 131, Nār. II. 1). *Vādin* and *prativādin* generally mean the plaintiff and the defendant, though *vādin* sometimes means 'a litigant' (either the plaintiff or defendant). '*Arthin*' (one who seeks the assistance of the court) and *abhiyoktṛ* (attacker) are synonyms of *vādin*, and *pratyarthin* and *abhiyukta* (attacked) are synonyms of *prativādin*. Kāt.

398. अथ वेद्यतिभूतमिति कार्ययोग्यस्तु याचिनः । न रक्षितो दिनस्यान्ते वृथाद्वयवाच्येन नम् । कात्या. quoted by मिता. on वा. II. 10 and V. P. p. 44.

399. आद्येद्वनमये कार्यमाद्यं लिखितं पक्षधिनोद्धतः समामानाद्विचित्रिहं लिखते इति विज्ञेयः । भाषा पण्डित वक्ष इति मार्कण्डेयः । मिता. on वा. II. 6.

(130-131) says that the judge<sup>400</sup> should have the *plaint* written down on a board (or on the ground) with a piece of chalk as narrated naturally by the claimant and then on a leaf (palm leaf or bark or paper) when it is corrected (after the defendant appears) and that the plaintiff may delete some matters from the original (draft of) *plaint* and may fill in gaps and that such amendments may be made in the draft till the *plaint* is finally settled.<sup>401</sup> It appears from the *Vyavahāratattva* (p. 205) that the pleadings (the *plaint* and the *reply*) could be written down in Sanskrit or in the vernacular of the parties if they were ignorant. The *Mṛochakatika* (Act IX) shows how the presiding judge asks the *śrosthin* and *kayastha* to write down the words 'not by me' as the complaint of the *Śākara* when the latter averred that *Vasantasena* was killed by *Cārudatta* and not by himself. The *plaint* could be amended till the filing of the *reply*<sup>402</sup> (*Nār.* II. 7). Elaborate rules are laid down about the contents of the *plaint* by many writers from *Kauṭilya* (III. 1) downwards. *Kaṭ*<sup>403</sup> states that in the *plaint* should be entered the year, season, month, fortnight, day, the documents (to be relied upon), the court (in which the *plaint* is lodged), the (amount of) debt (or other money due) and the country, village, caste, family, names and occupations of the plaintiff and defendant together with the relationship in which they stood to each other. *Kaṭ.* (127-128 q. by *Mit.* on *Yāj.* II. 6 and *Aparārka* p. 608) requires that in suits about immoveable property, ten details should be recorded in the *plaint* viz. the country, the place (town or village in which the property is situated), situation (boundaries or the figure such as a square &c.), the caste (of both parties), names,

400. अधिकृत शोधयेद्दुर्भाग्यान्वयं प्रतिपूरयेत् । पूर्वौ निवेदनेनावधानत् एवः प्रति-  
द्विः । पूर्वपक्षं स्वभावेन माह्विकाकोऽभितेजयेत् । पाण्डुलेखेन कलके ततः पत्रे विशेषितम्  
कारय. q. the first by लिख्य on वा. II. 6, the 2nd by लिता on वा. II. 6  
and both by अपराक p. 611, परा. म. III. pp. 65-67.

401. शोधयेत्पूर्ववार्दं तु पावकोत्तरदर्शनम् । अग्रहणपर्यन्तरेण निहृतं शोधनं भवेत् ।  
वारद q. by लिता on वा. II. 6: एतच्च संस्कृतवेदनाभास्यतरेण यथाभावे वक्तव्यं लेख्यं  
वा । सूक्ष्माणां च बाधिते वादित्वाद्भवेत् । अत एवावधानेति तयोर्के विष्णुधर्मोत्तरे ।  
संस्कृतेः पाठ्यैर्वाक्यैः लिख्यमनुकृतम् । वेदनाभास्यप्रायेण बोधयेत्तु मुरः स्तुतः ।  
पञ्चाशत्तम p. 205.

402. Under the Civil Pro. Code, Order VI r. 17 (Act V of 1908) the  
*plaint* may be allowed to be amended at any stage of the suit. The ancient  
Indian rule was somewhat stricter.

403. सवसरपुत्रु नाम पक्षं द्विषं कारणमधिकरणपूर्णं वेदकावेदकयोः कृतमन्या-  
वस्यवेदेन स्यात्तन्मतिर्वाचनामकर्मणि आभिहितम् बाधितित्वाद्युद्धानां तु पूर्वोक्तिवेषवत् ।  
अवधाना III. 1.



the dwelling place (of the parties), the measure (so many *niartamas* &c.), the name of the field, (names of) the father, grandfather and great-grand-father, mention of the former kings. Kāt. 124-136, Br. (q. in Sm. C. p. 36 and V. M. p. 294) give further details, which are passed over for want of space. All the details enumerated above need not occur in every plaint, but the necessary ones must be stated according to the facts of each case<sup>404</sup>.

These rules about the contents of plaints are very similar to those in the Indian Civil Pro. Code, Order VII rules 1-5.

In modern India no suit or appeal can be filed unless the plaintiff or appellant pays substantial court-fees (Rs. 7½ per cent upto Rs. 1000 and 5 per cent for higher claims up to 5000 and so on at reduced rates as the claim rises). It is interesting to see how the litigants in ancient India fared in this respect. It appears that in disputes of a criminal nature no court fees had to be paid in ancient India. The person found guilty had to pay to the king the fine declared in the Smṛtis for offences or awarded by the Court. As regards civil disputes also nothing had to be paid at the inception of the suit. Certain rules are prescribed by Kaut. (III. 1), Yāj., Viṣṇudharmasūtra, Nār. and others about payments to the king after the suit is decided, which payments may be regarded as in the nature of court fees. Yāj. II. 42 and Viṣṇudharmasūtra VI. 20-21 state that in the case of suits for the recovery of debts the debtor who admitted that he was a debtor (but did not pay the creditor) should be made to pay to the king 10 per cent on the amount decreed and the successful creditor should pay five per cent out of the amount decreed (as *bhṛti*, compensation or court fee)<sup>405</sup>. When the debtor denies the fact of debt altogether and the creditor succeeds in establishing it, the debtor had to pay the amount decreed to the creditor and an equal amount to the king as fine; but if the plaintiff turns out to be a false claimant (i. e. the relationship and the amount of the debt are not proved) he had to pay to the king as fine twice as much as the amount claimed by him (Yāj. II. 11). Nār. also (IV. 132) says<sup>406</sup> that a debtor, who is able to repay a debt but does not

404. वेदां मन्त्रे वाणि माधकवाधकमणोपपन्नासौपयोगीनि तत्र भवन्ति तत्र तान्त्रेय देवदानि न सर्वानि प्रयोजनमावाहत् । अथर्वकं p. 608.

405. उत्तमर्णधेन्द्राजाननिषातद्विभावितोऽधमर्णो राज्ञे धनद्वयमागमंसिन्तं वृण्वं दद्यात् प्रतार्यधोतमर्णो विप्रसितममंशम् । विष्णुधर्मसूत्र VI. 20-21.

406. आदिकः मयनो वस्तु दोषान्वाक प्रयच्छति । राज्ञा दायकित्तवः क्वात् दृष्टान्वा पञ्चकं शतम् \* नाश्व IV. 132. The *sch.* मयूख p. 182 reads दृष्टान्वांश्च तु विप्रकम् (i. e. 20 per cent).

do so through wickedness or malice, should be made to pay the debt after recovering five per cent. from the debtor. The Sm. C. II. p. 121 says that this applies to a case where the debtor admits his liability to the plaintiff. Manu VIII. 139 gives milder rules: 'if a debtor admits before the Court that he is a debtor, then he has to pay a fine equal to five per cent on the amount decreed, but if he denied the fact of debt altogether, then he has to pay as fine ten per cent'. Manu VIII. 59 which prescribes a fine twice of that amount which the debtor falsely denies or which the creditor falsely claims contains a somewhat different rule (which Medhātithi says applies where parties are guilty of downright fraud, while VIII. 139 applies where there is negligence or loss of memory &c.). In suits other than for debts such fines are also prescribed e. g. in Yāj. II. 26 for one who misappropriates a pledge, II. 33, II. 188 (for breach of the rules of guilds and other groups), Yāj. II. 171 (where a person claiming to be the owner of lost goods and failing to prove his ownership of them was fined *pañca-bandha* i. e. a fifth part of the price of the goods). Kaut. prescribes<sup>407</sup> that when a party is guilty of contradictory pleadings, or does not cite witnesses though saying he has witnesses and is defeated for these and similar reasons he has to pay a fine of 20 per cent of the claim and 10 per cent only if he relied on his own deposition (and called no witnesses) and further the defeated party has to pay the costs viz. the wages of the bailiff and of the subsistence allowance of witnesses. Therefore it may be said that in ancient times Indian litigants had an easy time, while in modern times litigation is often ruinous, what with the heavy court fees to be paid in several courts, the fees of legal practitioners and the expenses of witnesses and the delay of years<sup>408</sup>. The remark of Dr. Hart (in 'Way to justice' p. 17) is as applicable to modern India as to England 'the plain truth is that the justice of the courts is unattainable by some citizens through want of the necessary financial resources; while in the case

407. परोक्षदण्डः पञ्चमन्त्रः स्वर्षपादिदण्डो दण्डमन्त्रः । पुनश्च प्रतिवादाः । पति-  
मन्त्रमर्थविशेषतः । तदुभयं निवन्त्यो वृत्तात् । अर्थशास्त्र III. 1.

408. In modern times a plaint or memorandum of appeal is to be rejected if not properly stamped. Vide Order VII. r. 11 of the Indian Civil Pro. Code. The Peshwa's Government appears to have taken one-fourth or one-fifth from the party whose claim for partition or for recovery of debt succeeded. Vide 'Peshwa's Diaries' ed. by Rao Bahadur Wad, vol. 2 pp. 132, 146, 163.



of many others it is not worth having at the cost which it involves.

In one of his most famous soliloquies Shakespeare (in Hamlet III. 1 'Oppressor's wrong, the proud man's contumely, the pangs of despoiled love, the law's delays') enumerates law's delays among the principal evils of human life. In modern India as in England<sup>409</sup> before 1873 delay in the decision of causes is a crying evil. In the rough and ready methods of administering justice in ancient India care seems to have been bestowed on disposing of cases as quickly as possible. The story of king Nrga who caused delay has already been referred to (p. 243). Kaut. (III. 1) states that if the plaintiff, after the defendant files his answer, does not on the same day begin to support his case (by evidence) he would be declared to be defeated, since the plaintiff comes to court after determining the strength of his case, but the defendant does not do so (he is dragged to the court); that the defendant may be allowed an adjournment of three or seven days for his defence; if he is not ready with his defence within that time he may be punished with a fine ranging from 3 to 12 *pasas*; if he does not answer even after three fortnights he shall be punished with fine for *parokā* (viz. *paścābandha* or *dakṣabandha* as stated above in note 407) and the plaintiff's claim would be recovered from the property of the defendant. A similar rule is laid down in Manu VIII. 58. Yaj. II. 12 prescribes that disputes relating to *sāhasa* (killing by poison or weapon), theft, abuse, assault, cows, charges of grave sins and women (about the chastity of all women and about ownership in the case of female slaves), the defendant has to make his defence at once, and that in other cases time may be granted at the discretion of the court. Nār. I. 45 is to the same effect. Nār. I. 44 holds that adjournments may be granted in suits about debts and the like for finding out the truth as such disputes are complicated and as memory is weak. Pītāmaha (q. in Sm. C. II. p. 42) says that adjournments may be granted in disputes about deposits, sealed deposits, gifts, partnerships, transgression of conventions and partition of heritage. Gautama XIII. 28 speaks in general terms of an adjournment for one year, when the defendant does not remember the transaction, but prescribes immediate trial in

409. For the enormous delay in the disposal of even simple proceedings or Bills in Chancery in England, vide Holdsworth's 'History of English Law' (1926) Vol. IX. pp. 374-375 and 433-435.

disputes about kine, women and children or when the matter is urgent i. e. where loss or abandonment of the thing will be the result of delay (Gaut. XIII. 29-30). Bṛhaspati allows time even to the plaintiff if he is not able to put forward his case owing to his immaturity or lack of boldness.<sup>410</sup> Kāt. (145-158) quoted by Aparārka p. 619, Sm. C. II p. 42, Par. M. III pp. 69-72) contains elaborate rules about adjournments. He says that according to the importance or otherwise of the dispute, one, three, five, or seven days may be allowed to the defendant to make his defence in disputes about debts, according as the debt was contracted three months ago or 6, 12, 20 or 30 years ago; that even more than a year may be allowed if the defendant is an idiot or lunatic or is suffering from disease or if the subject of dispute or the witnesses are in a foreign country; that more adjournments than one may be granted in such cases; that according to Bṛhaspati in disputes about immoveable property also no adjournments should be granted; that if the act of God (*daiva*) or the king prevents the defendant from making his defence he should not be declared defeated, but time should be granted to him to prove this. It is clear that with the advance of time adjournments became longer and more frequent in Kāt. compared with the rigid rules of Kauṭ. Kāt. and Śūkra (IV. 5, 167, 209) contain the last word on this point. According to them delay in deciding causes is tantamount<sup>411</sup> to denial of justice (*dharma-yāpatti*, lit. death of Justice).

The sequence of stages in a law-suit is as follows: first the plaintiff makes his averments, then the defendant makes his reply; when both have finished, the members of the court speak (or deliberate among themselves) and after them (speaks) the judge (Kāt. 121 q. by Aparārka p. 611, Par. M. III p. 58). The four stages (*pādas*) of a law-suit, acc. to Yāj II 6-8, and

410. कर्णोपनिषिन्निषेपदानसंपूर्णकर्मणाम् । समये दावयामे च कातः कार्यो यव-  
स्ततः ॥ पितृमाह ॥ q. in स्मृतिच. II. p. 42; अभिवोक्ताऽन्यस्मिन्माह वचतुं मोक्षयते यदि ।  
तस्य कातः यदाहायः कार्योऽन्यस्तुल्यतः ॥ बृहस्पति ॥ q. in स्मृतिच. II. p. 40, अपराह  
p. 611.

411. न कातदरण्ये कार्ये राज्ञा साधनदर्शने । महस्य द्रोणे भवेत्काताहू र्धर्मवापदि-  
लक्षणा ॥ दद्यादेसाहस्यं तु कातं साधनदर्शने । उपार्थि वा समीक्षयेत् द्वैराजकुलं सदा ॥  
शुक्र IV. 5, 167 and 209. The first is almost the same as Kāt. 339 (q. in  
स्मृतिच. II. p. 92, यव. मा. p. 306, स. वि. p. 148, which read साक्षिमावाये and  
धर्मवापदिः )



Br. are named <sup>412</sup> *lāṣṭhāpāda* (the plaint), *uttarapāda* (the reply), *kṛāpāda* (the adducing of evidence), *sādhyaśiddhi* <sup>413</sup> or *nirṇaya* (the decision); while Kāt. 31 states them as *pūrvapakṣa*, *uttara*, *pratyākālita* and *kriyā*. *Pratyākālita* means 'discussion or consideration among the *sādhya*s about the burden of proof' (vide p. 260 n. 337). If several persons come simultaneously with complaints or plaints, then the order of taking up the cases is regulated by the *curia* of the plaintiffs i. e. the suit of a brāhmaṇa is first taken up (Manu VIII. 24). Kauṭ. I. 19 states <sup>414</sup> that the causes of temples (or idols), ascetics, heretics, brāhmaṇas learned in the vedas, about cattle and sacred places, of minors, of the aged, of those afflicted with disease or misfortunes, of the helpless and of women are to be looked into in the order enumerated or according to the importance of the causes or their urgency. Kāt. (122 q. in Sm. C. II. p. 35, Par. M. III. p. 59) says that preference should be given to that litigant whose injury is greater or whose cause is more important than those of the rest. Kauṭ. III. 20 went <sup>415</sup> so far as to say that judges should look into the causes of idols (or temples), brāhmaṇas, persons performing austerities, women, minors, the old, the diseased, the helpless, even if they did not come forward to complain nor should judges put forward the excuses of time (i. e. the long delay in taking cognisance of their causes), place, or (long) enjoyment (of their opponents).

Lengthy quotations and illustrations are cited in the commentaries and digests about the requirements of a good plaint. They are all passed over. They well illustrate the *penchant* of ancient Indian writers for divisions, sub-divisions and subtle distinctions.

Kāt. (136 quoted by Aparārka p. 609) specifies several reasons which make a plaint unacceptable viz. one that lacks

412. पूर्वपक्षः स्मृतः वादो द्वितीयस्तुतथा । क्रियापादस्तथा वाच्यस्तुतर्पो निर्णयस्तथा ॥ दृढ- ५. by अपरार्क p. 616; पूर्वपक्षश्चोत्तरं च वाच्यकालिमेव च । क्रियापादश्च तेनार्थं चतुष्टयात्मिमुदाहृतः ॥ कात्या- ५. by अपरार्क p. 616. V. P. p. 44 quotes a verse of Br., where *प्रत्यकालित* is the 4th पादः.

413. अत्र च सिद्धिज्ञानेन सत्यानामधिपत्यधर्मिष्वप्यवयवराजदवाधाराणोपायभूतं धर्मानामस्पर्धे ज्ञातव्यं; धर्मोतीति विचारकाणां परामर्शः; प्रत्यकालितादिशब्दवाच्यं उच्यते सिद्धिकलत्वात् । अपरार्क p. 616.

414. तन्मार्गेणानामनपादवत्त्वोक्तिरप्यस्तुतस्यानामां बालबुद्ध्यापितरपसम्प्रदायानां शीर्णां च क्रमेण कालानि परदेत् । कार्यमीरवादावधिककरोन वा । अर्थशास्त्र I. 19.

415. वेदब्राह्मण्यतवत्स्वीचालबुद्ध्याधिपानामनपादानामधिसरतां धर्मस्थाः कार्यार्थि कुर्वन् । न च देशकालभोग्यल्लेनातिवरेत् । अर्थशास्त्र III. 20.

the mention of the time and place ( of the cause of action ), that omits the statement of the material ( *dravya*, which is the subject of dispute ) or the amount thereof and that is wanting in ( stating ) the extent of the relief claimed, that is opposed ( to the interests or usages ) of the country, that is prohibited by the king's order, that mixes up several vyavahārapadaś, <sup>416</sup> Certain plaints are declared to be vitiated ( *pakṣābhāsa* ) <sup>417</sup> and not entertainable viz. a plaint that contains an unknown ( or imaginary ) grievance, that discloses no injury, that contains letters or words making no coherent sense, that states no cause of action, that is incapable of proof or is self-contradictory ( Kāt. 140 q. by Mīt. on Yāj. II. 6, Par. M. III. 61 ). Nār. II. 8 also points out the faults ( *doṣas* ) of a plaint and explains them ( II. 9-14 ). Brhaspati states that there is to be no law-suit between teacher and pupil, father and son, husband and wife, and master and servant. This does not mean that law-suits between these pairs are altogether prohibited but that suits between them are undesirable, that the king or judges should persuade them to desist from proceeding in Court, that if they persist the court has to decide the suits according to the śāstra. <sup>418</sup> Manu ( VIII. 299-300 ) prescribing the same punishment as for a thief in cases where a wife, son, slave, servant or brother is beaten for correction more severely than is allowed in the śāstras by the husband, father, master, or elder brother respectively conveys by implication that a legal proceeding by these is possible. The smṛtis did not encourage disputes based on

416. If a plaintiff states ' the defendant stole my gold, I deposited a thousand *dramma*s with him which he does not return, he sold a cow to me without being its owner ', there is a joinder of three vyavahārapadaś viz. *steya*, *nikṣepa*, *astūmitvīkṛaya*. This is not a bad or altogether unacceptable plaint. All that is meant is that the trial of all these cannot be carried on simultaneously, but one after another.

417. अवशिष्टं निराकारं निरर्थं निष्प्रयोजनम् । अकारणं वा विद्वद् वा पक्षभागे विवर्जयेत् । कारपापन quoted by Mītā. on वा. II. 6 ( without name ), परा. मा. III. 61. The स्मृतिच० II. 37 ascribes the same verse to बृहस्पति ( last pāda being पक्षं राजा विवर्जयेत् ). Vide my notes to Kāt. 140 where it is shown how there is a good deal of divergence about the interpretation of this verse.

418. सुवशिष्यो पितापुत्रौ दुष्पती स्वामिभूयको । एतेषां समवेतामां व्यवहारो न विद्यते । नारद० acc. to विश्वस्व on पाद्म. II. 5. and बृह० acc. to मनुस्मृत्य and वा. II. p. 34. The latter remarks ' तस्मादिदं वचनं सुवशिष्योऽपि विवर्जयेत् । सह व्यवहारकरणे लोकहरे न श्रेय इह निष्कारकत्वाद्सुव श्रवणजनकत्वादिभेदेत्यत्रमेव । राजाविभिन्न वापसुस्थितो व्यवहारो लोकहरेणानिकरत्वादिति निवार्यमाणा । अपि विवर्जयेत् न पणितुवन्ति । केचन तेषां पक्षाशक्तं निर्णयकरत्नदोष एव । ; vide also Mītā. on वा. II. 32 for similar words.



flimsy or trumpery grounds. Bṛhaspati<sup>419</sup> says that a plaint that is *nirarthaka* (i. e. the injury in which is very small or the monetary value involved is negligible) should not be entertained by the king. This is on the principle of *de minimis non curat lex* (the law does not take account of trifles) also embodied in sec. 95 of the Indian Penal Code.

When the plaint has been finally settled, the defendant should be called on to reply in writing to the plaint in the presence of the plaintiff (Yaj. II. 7, Nār. II. 2). This is called *uttara* (reply) or *pratipakṣa* (Nār. II. 2). When time may be given to the defendant for putting in his answer has already been stated above.

The answer of the defendant must possess the following characteristics viz. it must completely meet all the points of the plaint, it must not deviate from the truth, must not employ vague words, must not be self-contradictory, it should not be such as to require further explanation (because of containing words in a foreign tongue or unknown or rarely used words or elliptical or badly arranged sentences).<sup>420</sup> A reply is of four kinds, (1) *mithyā* (of denial), *sampratipatti* or *sattya* (confession or admission), *kāraṇa* or *pratyavastandana* (of special plea or demurrer), *prāṇanyāya* or *pūrānyāya* (of former judgment or *res judicata*). A reply of denial may take four forms (Nār. II. 5) viz. (1) this (what is affirmed in the plaint) is false, I do not know anything about it, I was not present (when the transaction alleged in the plaint is said to have taken place), I was then not born.<sup>421</sup> The first is a direct denial, the others are implied or indirect. Very strict rules of pleading were evolved by the

419. स्वल्पानराधः स्वल्पाधो निरर्थक इति स्मृतः । इहस्पतिः पृ. in म. वि. p. 87 and स्मृतिच. II. p. 37, which explains तत्र निरर्थकस्योदाहरणम् । अहमेव सत्यम् भिरिति : मानकी आशानेनाप्युक्ता इति वा ।

420. यत्तस्य स्वापके सारमनादिवचनमाकुलम् । अपवादवाचस्पतिमिश्रेणुत्तरं तद्विदो विदुः : a quoted by मित्र. on वा. II. 7. अपवादं p. 612 (ascribes to नारद), स्मृतिच. II. p. 42 (ascribes to यज्ञवल्कि), शुक् IV. 3. 139.

421. मिथ्या अप्रतिपत्तिर्वा परावस्तुभवेव वा । वाङ्मनापदिभिस्तार्थं वा उत्तरं स्वाध-सुविधम् : नारद II. 2; कात्यायन has सत्यं मिथ्योत्तरं चेत् तस्य वस्तुत्वं तथा । पूर्ववा-चादिभिर्वाच्योत्तरं स्वः कर्तुं विधम् : पृ. in. मित्र. on वा. II. 7. The same is शुक् IV. 3. 144. एतदेवापरमिति तै. विदुः वदते । इह कात्यायनः तस्येतां तु विधा पञ्च ह्यभिप्रेत्येव कीर्तिता । आधर्षं तद्विजाभीषातृवदधरेव नाम्बधा : एवम्. मि. p. 31 and-म. म. p. 307 (reads वाकिता तु विधा). आधर्ष is probably derived from अधर् (meaning 'lower', 'weak' or 'inferior'). The स्व. म. reads आधर्ष, which appears to be a wrong reading.

time of Kāt., who provides (144) that if a statement asserted by the plaintiff in the hearing of the defendant is not traversed by the latter or if the latter remains silent when he should have given a reply, it (should be held by the court that it) is admitted (by the defendant).<sup>422</sup> When the defendant declares the truth of the claim made in the plaint that is a reply of admission. Where the defendant accepting as correct the matters (or facts) set out by the plaintiff raises a plea, that is a reply of special plea.<sup>423</sup> The same is designed by some as *ādhūrya* or *ādharma* (rendering futile) of the plaint. For example, where plaintiff avers that defendant took one hundred rupees and defendant accepts that fact but adds either that he later on returned them or that they were really donated to him, that is a reply of special plea. Where a person though defeated in a (former) proceeding again causes a plaint to be written and is addressed (answered) with the words 'you were formerly defeated', that is a reply of former judgment. That there was a former judgment between the same parties may be proved by citing the judges or arbitrators or by citing other witnesses or by producing the writing itself i. e. the copy of the judgment (Kāt. 172).<sup>424</sup> In a reply of admission there are only two stages of *vyavahāra* viz. the plaint and the reply; there is no need of proof (so there is no *kṛyāpāda*) and the plaintiff succeeds as a matter of course (and so there is no necessity of a regular judgment, *nirṇaya*). Kāt. (173-190) states at great length the faults of a reply and also what are not proper replies. The Mit. (on Yaj. II. 7), Aparārka pp. 613-614, Śm. C. II. pp. 43-46 and

422. आप्तमापीयिना पत्रं यो ह्यप्यो न विधाति: । दानकालेऽथवा दूर्ध्वो विधातः सोऽर्थोऽनुवोदितः ॥ कात्या. q. by कुर्यकल्पवृद्ध. Compare Order VIII rule 5 of the Civil Pro. Code.

423. अधिना लेखितो योऽर्थः सत्यधी पादितं तथा । यद्यप्य कारणं व्याप्यवत्कम्बुने स्तुतम् ॥ श्रुत IV. 5. 148. नारद q. by मिता. on वा. II. 7: vide कात्यायन 170, q. by श्र. मा. p. 307 (reads दोषिनाथः सक्तुदितः), श्र. प्र. p. 59 (which reads आधर्षं सुमुखसीत् as the last *pāda*).

424. विभावयानि कुलिकैः साक्षिभिर्लिखितेन वा । जितशैव सवापं याकुमः कुन्वाप-  
स्त्रिकारका ॥ कात्यायन q. by स्तुतिच. II. p. 43 which explains 'कुलिकैरिति प्र-  
त्ययवहारस्तुत्यासुपलक्षणात्', श्र. प्र. p. 61. The श्र. नि. (p. 33) has the follow-  
ing note on this 'हेन्द्रयनि निवस्य याकुम्यापविमिसिद्धौ जपयत्रेणाहं भावयामीत्येकः  
कुलपव्यहारे च जपयामीत्यात् कुन्वाः कुलविवादेषु विज्ञेयान्तेषु साक्षिभः—इति वचनात्  
नेत्रं जपयामीतिभिर्भाषयामीति द्विवीचः । राज्ञा धर्मात्मनश्चैव पच्युतं तत्रवृद्धिना । मातुः  
साक्षिं भवेत्तत्र सुकृता राज्ञाऽमीत्यर्थः ॥—इति वचनात् साधयामीत्येव राज्ञा भाषयामीति  
सुधीयः ॥'



other digests quote long passages from Kāt., Br., Hārta, Vyāsa and others on faults of *uttara* and illustrate them at length. These have to be omitted for want of space. One of the faults is '*saṅkara*' (mixture or confusion or misjoinder of pleas in defence). For example, if the plaint alleges 'the defendant took gold, a hundred rupees, certain valuable clothes and a quantity of corn and has not returned any of them,' and the defendant's reply is 'I took the gold, I never took any rupees, the plaintiff donated the clothes to me, as to the corn plaintiff had already filed a suit against me and failed'. Here the reply contains all four varieties, viz. the first is a reply of admission, the 2nd is one of denial, the third is a special plea and the 4th is a plea of former judgment. This is a *saṅkara*. But it is not meant that this reply would not be allowed. All that is meant is that, as the burden of proof varies, the adducing of evidence will not be allowed simultaneously, but one after another. Vide Mīt. on Yāj. II. 7, Par. M. III. pp. 77-80. These questions are concerned with cases in which several issues arise, the burden of proving some of which lies on the plaintiff and the burden of proving others lies on the defendant. If a defendant does not come forward to give a reply, the king or judge should make him give one by *sūna* (conciliatory words), *bheda* (threats) and other ways and if he does not give a reply for seven days after that, he may be declared to have been defeated and a decree may be passed against<sup>423</sup> him. Kāt. (III. 1), Yāj. II. 9, Nar. I. 55, Kāt. (163) state that a defendant cannot<sup>424</sup> raise a counter-claim (*pratyakhyoga*) as long as he has not met the attack of the plaintiff, nor should another plaintiff attack a person who is a defendant in a suit already filed, except in the case of abuse and assault, *sāhara* (death or grievous hurt by a weapon &c.), theft or in a very urgent matter, or in disputes among members of caravans or guilds or in charges of adultery, Yāj. II. 29, Nar. IV. 93, Śukra IV. 5, 120 say that when a litigant dies while a suit is pending, his son (or other representative) who takes his estate should carry on the litigation or be liable for the claim and the son cannot add his own enjoyment (to make up

<sup>423</sup> उपप्रेष्योद्यमानस्तु न दद्यादुक्तं तु यः । अतिक्रान्ते सप्तमात्रे जिहोऽसौ दातु-  
मर्हति । वसिष्ठ q. to इष्टलिच. II. p. 46, वरा. मा. III. p. 81, न्य. न. p. 56 (reads  
उपप्रेष्योद्यमाः and दण्डमर्हति). This is Hārta acc. to स. वि. p. 99.

<sup>424</sup> अभियुक्तो न वयमभियुक्तीन् अन्वयः कलहसाहसमार्थसमवायेभ्यः । न चाभि-  
युक्तेऽभियोगोक्तिः । अर्थशास्त्र III. 1; अभियुक्तोऽभियोगाभियुक्तीन् कारिचिन् । अन्वयः  
दण्डवाङ्मयत्वे वसंश्रयमापयान् । कात्या. q. by न्य. मा. p. 299; should we not read  
चाभियुक्ती or चाभियुक्ती ?

three generations &c. as required for possession ripening into ownership) :<sup>427</sup>

There were many grounds on account of which a litigant became what is called *hina* (a losing party) and some times either had his plaint dismissed or his defence struck out and a decree passed against him or he was simply fined. For example, Nār. II. 33 speaks of five kinds<sup>428</sup> of *hina* viz. one who changes his statements (or pleading), who does not prosecute his pleading by adducing evidence (i.e. avoids investigation), who does not appear when summoned, who gives no reply, who disappears or runs away when summoned. Nār. I. 56-61, II. 24 explain some of these and other *hina* parties. Kāt. 202 (q. by Sm. C. II. p. 47) prescribes that the above five should respectively be fined 5, 10, 12, 16 and 20 panas. Nār. II. 25 states that in all civil disputes such as those about women, land or debts the litigant does not lose his cause even if he commits a mistake in his statements, but he is liable to fine. This conveys that in disputes arising out of wrath (*manyukṛta* i.e. in criminal matters) a person loses his cause if he is guilty of the above acts and he is prohibited from pursuing the matter again. Kaut. III. 1, Manu VIII. 53-57 contain in almost the same words, certain similar rules, Kaut. calling the several actions causes of *parokṣa* (defeat). Vide Yāj. II. 16, Śukra IV. 5. 136, Kāt. 191-210 for further details on dismissal for default and cognate matters. In these cases of *hinavādans*, though a fine was imposed, a retrial could be ordered. When defendant filed his reply and parties joined issue in court, Br. and Kāt. say that they should not then be allowed to compromise the dispute privately without the permission of the

427. सोभिषुक्तः परितः स्वावश्य रिक्थी तदुद्धरेत् । वा. II. 29 ; नवर्तयित्वा वादं तु वादिनी तु वृत्ती यदि । तदुक्तो विप्रवेत्तयोः कल्पया तु निवर्तयेत् । श्रुत IV. 5. 129.

428. अन्ववादी किवादेवी नैपस्याता निवारा । आश्रयतलापी च द्विजः पञ्चविधः स्तुतः ॥ नारद II. 33.

429. पूर्वोत्तरे संनिविष्टे विचारे संवर्तयेत् । यज्ञं ये निधो यागिन् द्वाप्यास्ते द्विद्वयं दमय ॥ ... साक्षिभ्यनिफलपस्तु यदेतच्चोभयोरपि । दोषादयानौ यो सर्वत्र क्षुण्णौ तौ विचक्षते ॥ इमानममता पञ्च भेदाः शास्त्रचरित्रयोः तत्र राजाज्ञया सन्निवर्तयोरपि शस्यते । बृह. q. by स्तुतिच. II. p. 49, स. नि. 104, परा. मा. III. pp. 84-85, ख. द. p. 77; आनेच पण्डीतायै यज्ञं यागिन् ये निधः । सर्वे द्विद्वयदण्डयः स्तुतिपल्लवान्मुदराय तु । कात्या. 210, q. by स्तुतिच. II. p. 49, परा. मा. III. p. 84, ख. द. p. 77, the ev. d. says (p. 77) 'द्विद्वयो वृक्षस्तु परमपगिनिमिद्वयदण्डयश्च न द्विधावृक्षद्विपल्लवदण्डयश्च । अद्वयविषाद्विषययोः । Vide S. B. E. vol. 33 pp. 295-296 verses 10-12 for Br. (Dr. Jolly's tr. of verse 10 is not correct). Compare Order 23 r. 2. of the Indian Civil Pro. Code and sec. 345 of the Criminal Pro. Code for compounding offences).



court; if they did so they were both to pay double of the fine imposed on a defeated party, as they deprived the king of his dues (court fees). But a compromise with the court's permission was allowed when the parties were in doubt as to what the witnesses might say or the *sabhyas* might decide (in such cases it would be wisdom for the parties to compromise) and particularly when the evidence on both sides was evenly balanced or where there was a conflict between the different *smṛtis* and usages.

When the reply had been given the *sabhyas* had to consider the question about the burden of proof. Br.<sup>430</sup> says 'the *sabhyas* after considering the nature of the reply should call upon one of the parties that are in court to establish his case' (Sm. C. II. p. 50). What a party sets out to establish is called *sādhyā* and the means whereby the claim (of the litigant) in its entirety is established is called *sādhana* (Kat. 213 in V. P. p. 79). Yāj. II. 7 and Nār. II. 27 say that the party (on whom the burden of proof lies) should immediately (after the reply is given) write down the means whereby he proposes to prove his averments. This third stage (*pāda*) is called *kriyā* i. e. proof. *Sādhyā* and *kārya* are synonyms, *kriyā* and *sādhana* also are synonyms (Kat. in Aparārka p. 616, Vyāsa in Sm. C. II. p. 54). The rules about burden of proof are laid down by Hārita (q. in Mit. on Yāj. II. 7, Aparārka p. 616). In a reply of denial, the burden of proof is on the plaintiff, in a reply of former judgment or of a special plea, it is on the defendant and in a reply of admission no question of burden of proof arises. Compare also Nār. II. 31. The Mit. on Yāj. II. 80 states another rule that an affirmative proposition has to be proved by him who asserts it (*bhāvaḥ pratyakṣānūvādin eva kriyā*). Yāj. II. 22, Nār. II. 28-29 and IV. 69, Br. (in Sm. C. II. p. 54), and others say that means of proof are two-fold, human and divine, and that documents, witnesses and possession are the human means of proof (Vas. 16. 10 also), while the ordeals of balance and others are divine means. Yāj. II. 22, Nār. II. 29, Kat. 217 expressly state that ordeals are to be resorted to only when none of the human means are possible or available. If one party relies on human means alone and the other offers divine means, the king (or judge) has to accept human means and not divine; in disputes among men, if there be human means of proof though reaching

430. वेदं जिहन्ति कथं तेषां सम्यग्निर्वाणः । कदापिबोद्धरे मन्त्रावाप्तयेकदं  
वादिनः ॥ बृह. १२ सूत्रिकः II. 50.

(or covering) only a portion (of the allegations in the plaint) then human means should be accepted and not divine ones even though the latter may cover the whole ground (Kat. 218-219 q. by Mit. on Yaj. II. 22). This latter rule is based on the proposition laid down in Yaj. II. 20 and Visnudharmasūtra VI. 22 that when a party totally denies a claim and the opponent establishes by evidence a substantial portion of it, the judge may pass a decree against the denying party for the whole of the claim. This is practically the same as the maxim 'omnia praesumuntur contra spoliatorem'.<sup>431</sup> Therefore the general rule was that the divine mode of proof was to be resorted to only in the absence of any human means of proof. Kat. 229 (q. by Mit. on Yaj. II. 22, Aparārka p. 629) allows witnesses or ordeals when the dispute is started with reference to *sāhasa*, assault or abuse and causes that spring from force and Kat. 230 (q. in Sm. C. II. p. 51) provides that, in the case of a person guilty of *sāhasa* perpetrated in secret, investigation has to be made by divine proof. Kat. 225-228 (q. by Mit. on Yaj. II. 22, Aparārka p. 629, Sm. C. II. pp. 53-54) lay down certain rules about preference among the several means of proof: whatever are declared as the conventional usages of the associations of traders, of guilds (of artisans) and of groups (of brāhmaṇas), the means of proving them are documents and not ordeals nor witnesses; enjoyment<sup>432</sup> (or possession) alone is weightier in the case of the making and (the use of) doors and ways, as also in the case of water-courses and the like (i. e. in the case of easements) and not writing nor witnesses; in the case of things promised to be given but not given, when a decision is to be given in disputes of servants with masters, in the matter of taking back a thing after it is sold or when a person having purchased a thing does not pay the price, in gambling and prize fighting—when in these matters disputes arise the means

431. Vide H. of Dh. vol. I. p. 204 and n. 367, where a half verse from the drama Vikramorvaśīya (IV. 17) is quoted containing the same proposition and it is shown that Nārada as quoted in V. M. p. 311 and Par. M. III. p. 203 contained the same half verse. The half verse is विभावितैकेदशेन द्वेयं बहुभिपुनस्तैः. The maxim cited above is relied upon in *Ardashir v. The Collector of Surat* 3 Bom. H. C. R. (A. C. J.) p. 116 and in *Frainji v. The Commissioner of Customs* 7 Bom. H. C. R. (A. C. J.) p. 89.

432a. In *Lalubhai v. Bai Amrit* 1. L. R. 2 Bom. 209 at p. 312 there is a reference to Kat. 226 द्वारमार्गकिदागोने जलवाहादिकं तथा । सुक्तिरेव तु सुप्री स्वात्म विप्रं न च माह्विजः । There is a similar verse of Kat. 314 (q. in *रत्नविजः* II. p. 67) 'स्वयान्वितमद्वारजलवाहादिसंज्ञये । सुक्तिरेव तु सुप्री स्वात्ममोक्षेयसिद्धिं निश्चयः ॥'



of proof are witnesses and not documents nor ordeals. Marici (q. by Sm. G. II. 60, V. P. p. 141) states that as regards the sale, mortgage, gift or partition of immoveable property a document (should be executed as it) enables the person (in whose favour it is executed) to acquire (clear) title and freedom from doubt<sup>432</sup> (even after the lapse of years). It is in consonance with this that the Indian Legislature (in the Transfer of Property Act, IV of 1882) requires writing and registration as regards the sale, mortgage and gift of immoveable property. Nārada IV. 75 very concisely hits the special characteristics of each *pramāṇa*: 'a document is always strong, witnesses are strong (as evidence) only as long as they are alive, possession becomes strong as time passes'. The comparative strength of the several kinds of evidence is well put by Brhaspati<sup>433</sup>: 'Witnesses are superior to inference (circumstantial evidence), a document is superior to witnesses, undisturbed possession for three generations is superior to all these'. Kāt. 221 (q. by Mīt. on Yāj. II. 80 and V. P. p. 80) gives the warning that when a litigant abandoning a strong ground or means of proof resorts to a weak one to prove his case, he would not be again entitled to rely on that (strong ground of proof) after the members of the court have decided as to who should succeed. This practically propounds the same rule as that of constructive *res judicata* contained in explanation 4 to section 11 of the Indian Civil Pro. Code (of 1908).

The means of proof will now be briefly dealt with in order. And first come documents. Those in search of an exhaustive treatment may usefully consult Dr. Amarendra Nath Thakur's 'Hindu Law of Evidence' (Calcutta, 1933).

When writing was first employed in India and how the Indian Brāhmī alphabet was derived have been moot points for many decades among scholars. Max Müller's theory ('History of Ancient Sanskrit Literature' p. 507) that the use of writing for literary purposes was unknown to Pāṇini was thoroughly exploded by Goldstücker in 'Pāṇini and his place in Sanskrit Literature' and was later on abandoned by Max Müller himself.

432. स्वामिने विक्रयधारे विभागे दाने एव च । लिखितेनानुयायिनाद्विनिर्दिष्टाद्वये च ॥ मरीचि q. by स्वामिन् II. p. 60.

433. अथवा नारदः सार्वभौमः लिखितं द्रष्टुं । अथवा नारदः विदुषी दुर्लभम् । मरीचि ॥ इह. in ए. म. p. 350, स्वयंभूतः p. 224; the same is कालावध (313) acc. to ए. म. p. 313. Probably कालावध took over इहस्वयं verse or there may be some mistake in quoting.

Then Bühler (in 'the Origin of the Indian Brāhmī alphabet') started the theory that Brāhmī was derived from a foreign Semitic script about 800 B. C. and this hypothesis held the field for a long time (vide e. g. Rhys Davids in 'Buddhist India' chapters VII and VIII). Even Western scholars are not now prepared to accept this dating of Bühler; vide Cambridge History of India, vol. I, p. 141 (1923). The excavations at Mohenjo-daro tend to throw grave doubts on this theory and discredit it. At Harappa and Mohenjo-daro there is writing (not satisfactorily deciphered yet) on burnt clay and pottery. The Piprahva vase shows writing on stone several centuries before the Christian era and the Sohgaur copperplate inscription is the earliest writing on copper plates yet discovered (vide Annals of B. O. R. Institute, Vol. XI p. 32 ff). This is not the place to discuss the questions about the origin of the art of writing in India and of the Brāhmī script. It cannot be gainsaid that the most ancient dharmaśāstras refer to writing as well-known. Gaut. XIII. 4 appears to refer to a witness signing himself as such on a document. Vas. 15.10, Viṣṇudharmaśūtra VI. 23, Yāj. II. 22 mention *likhita* (document) as the first means of proof. Manu VIII. 51 uses the word *karaka* in the sense of document (*arthaprayajamānam tu karakam vāhānam*), in VIII. 168 refers to documents obtained by coercion and in IX. 232 to fabricated royal edicts (*kūṭasāsana*). Kaut. has a special chapter (II. 10) on royal writings (*sāsana*), in which he dilates upon the qualifications of the king's scribe, on the contents of an official document, the good points required in an official missive, on various divisions of writings and on the faults in official writings that are to be avoided. In I. 11 Kaut. prescribes that the king should hold consultations with absent ministers by sending a letter (*patra*, a leaf of palm or a piece of birch bark or similar material) and in I. 19 states that consultation by letter (*patra*) with the council of ministers should be held in the fifth part of the day. In II. 7 Kaut. advises the construction of rooms with shelves for books containing accounts (*akṣapatalam nibandhapustakasthānam kārayet*). Vide also Kaut. II. 21, II. 30, IV. 9, IV. 10 for references to writing in various other connections. Kaut. (III. 1) appears<sup>434</sup> to use the word *karaka* in the sense of document and gives a rule which is the same as Yāj. II. 23. Yāj. I. 319 speaks of land grants being written or

434. यस्मिन्ने तेषां करणमद्वेषाधिपत्तौ अद्येयम् । अर्थशास्त्र III. 1; compare वा. II. 23 सर्वेष्वधिपतिष्वप्युपलभ्युत्तरा क्रिया । आद्यो यस्मिन्ने कीले पूर्वा तु पलपलका ३,



engraved on cloth or copperplate. Megasthenes (McCrindle p. 69) no doubt says that Indians have no written laws, but there is no doubt that he is under some misapprehension as to what he was told, since in another place (p. 83) he refers to philosophers committing useful suggestions to writing. Similarly Strabo (XV. 1. 53-54) states that the Indians were ignorant of writing, but (67) narrates that Nearchus states that Indians write letters on cloth. One of the oldest copperplate grants is the Taxila plate of Moga (identified with Moa of the Śakas) and is not later than 120 B. C. Vide E. I. Vol. IV. p. 54 and Rapson's 'Indian coins' p. 7. It appears that wooden boards were used for writing ephemeral matters and *patra* for more permanent use, as Kāt. (p. 293, n. 490 above) states that the first information was to be written on a board with chalk and the formal plaint on a leaf (*patra*). The Lalitavistara (10th chap. p. 143, B. I. ed.) states that the Buddha used a board of sandal-wood for learning the scripts (-candanamayam lpi-phalakam-ādāya).

Yāj. II. 84-94, Nār. IV. 69-75 and 135-146, Br., Kāt. 249-312, Śukra II. 291-318, IV. 172-182 and several digests devote great attention to documents. A few salient points only will be brought out here. Nār. (IV. 70-71) eulogises documents by saying that if the Creator had not created writing which is like an excellent eye, the world would have come to grief and that a document is an indubitable means of apprehending the time, the place, the object, the material, the extent and the duration of a transaction. Br. (q. in V. P. p. 141) says that, since<sup>435</sup> people begin to entertain doubts (about a transaction) even in six months (from an occurrence or transaction) the Creator therefore created in the hoary past letters which are recorded on writing material (*patra*). The Lalitavistara (about 2nd or 3rd century A. D.) mentions 64 scripts which were known to the Buddha, among which the first is Brāhmi (10th chap. p. 143). Nār., Br., and Śukra probably try to explain why the alphabet current in their days was called Brāhmi (it was created by Brahmā). Śukra II. 297, IV. 5. 172 are similar verses. The texts divide documents in different ways. Viṣṇu<sup>436</sup> Dh. S.

435. यामनासिद्धौ समये ज्ञानिः सञ्जायते वृथा । धामाक्षराणि वृथानि पञ्चाङ्गान्  
स्वतां पुरा । इह- १. by २४. नि. p. 83, २४. ३. p. 141: ज्ञानोः पुरुषधर्माणां हि सर्वं  
निर्माणकं परम् । ... अतः पुरातनं स्मृत्यर्थं लिखितं निर्मितं पुरा । यनाञ्च जगद्व्यापारं वर्ण-  
नं यथोचितं लिखितम् ॥ शुक्र II. 291 and 297.

436. राजाधिकारये तन्निबुद्धकालसम्बद्धं तद्व्यपककालचिह्नितं राजनाशिकम् । विष्णु-  
धर्मसूत्र VII. 3.

VII. 2 divides documents into three kinds viz. those written before the king (i.e. by public officers), those bearing the superscription of witnesses and those without witnesses. The first is a document written in a state office by a scribe appointed by the king and bearing the signature of the head or superintendent of the office. This is just like the registration of documents in modern India. Br.<sup>437</sup> (q. by V. P. p. 141, V. May. p. 24) divides documents into three sorts viz. royal writing, writing made at a fixed place and that written in one's own hand. Nar. IV. 135 speaks of two kinds viz. one written by the executant himself in his own hand and that written by another; (the first of these is valid) without attesting witnesses, while the second requires to be attested. In the former no writer (lekha) nor witnesses are necessary, while in the latter both are necessary. Even now in India no deed concerning even immoveable property is required by law to be attested except mortgages and gifts. The author of the Saṅgraha, the Mit. on Yāj. II. 84 and several others divide documents into *rājakiya* (public) and *jānapada* (private or of the common people). The V. Mayūkha (p. 24) says that *lekha* and *jānapada* are synonyms and *jānapada* document is of two kinds viz. written by the executant himself in his own hand and that written by another, and that the first may be without attestation of witnesses, but the other must be attested. On Yāj. II. 82 the Mit. divides documents into *śāsana* and *ciraka*. The first is the same as *rājakiya* (described in Yāj. I. 318-320) and *ciraka* is practically the same as *jānapada* writing. On Yāj. II. 89 the Mit. remarks that a royal deed must be written in correct and elegant language but a document executed by ordinary people is not required to be in correct Sanskrit, but may be written in the local dialect of the parties. Yāj. II. 89 states that a document written by the executant himself in his own hand is authoritative except when it is brought about by force or fraud. Yāj. II. 84-87 prescribe that a document of debt or the like should be written down by mutual agreement, that the creditor's name should be placed first, that it should

437. राजलेखं स्थानकृतं स्वहस्तलिखितं तथा : लेखं तु त्रिविधं योक्तुं मिथं तद्वचनं  
 पुनः ॥ इह. in श्रु. म. p. 141, श्रु. म. p. 24, वेद. म. III. 110. स्थानकृतं (written in a well-known place by a professional scribe appointed by the king or his officers and attested by witnesses). राजकीयं जानपदं द्विविधं लिखितं  
 भुवम् : शासनं राजद्वारादौ कीरकं स्वाध्यायिषु : प्रजायति q. by श्रु. म. p. 82, श्रु. म.  
 नि. p. 83 explains स्थानलेखं तु ग्रामजनवद्वादिस्वधिकृतकायस्थकृतं तद्वचनं कदाचिद्विदं  
 कीरकमित्युच्यते ।



mention the year, month, half month, *tithi* (day), the names, caste, gotras, the Vedic School, the names of the fathers of the parties, that when the writing is finished the debtor should write at the end that the deed is approved by N. N. (the executant) son of so and so, that an even number (i. e. not less than two) should attest the document, stating their father's names and that they attest as witnesses and the scribe should write at the end that he wrote the document at the request of both parties. If the debtor or any witness cannot write, his signature should be made by another in the presence of all witnesses (Nār. q. by Mīt. on Yāj. II. 87 and by Vy. Nir. p. 87 without name). Rājakiya documents are of three kinds (acc. to Br. quoted in V. P. p. 141, V. May. p. 24) viz. *śāsana* (a royal grant of land), *jayapatra* (a judgment deciding a law-suit), *prasāda-patra* (a deed showing the king's pleasure at the devoted service or bravery of a person); acc. to Vasīṣṭha (q. in Sm. C. II. p. 55 and V. May. p. 28) it is of four kinds viz. *śāsana*, *jayapatra*, *ājñāpatra* (a royal command addressed to feudatories, high or low officers like the wardens of the marches), *prajñāpanāpatra* (a writing of request addressed by the king to sacrificial priests, a *purohita*, teacher, learned brāhmaṇas or other highly honoured persons); it is five-fold acc. to S. V. pp. 111-113 viz. *śāsana*, *jayapatra*, *ājñāpatra*, *prajñāpanāpatra* and *prasādapatra*. Kaut. in II. 10 speaks of several kinds of royal orders and names them, such as *prajñāpanā* (request by a messenger about what another prays), *ājñāpatra* (as above), *paridāna* (honour to the deserving or gift in distress), *parihāra* (remission of taxes for certain castes or villages by the king), *nirastilekha* (writing whereby the king accepts the actions or words of some trustworthy person as his own), *prastilekha* (conveying information about some portentous happening or some news about enemies etc.), *prastilekha* (reply in accordance with discussion held with the king on a message from another), *sarvatraga* (order addressed to high functionaries and officers for the welfare of travellers). The contents and form of royal grants have been described in H. of Dh. vol. II pp. 860-861. The jānapada writings are divided into various sorts, seven (acc. to Br. q. by Aparārka p. 683, Sm. C. II. p. 60) or eight (acc. to Vyāsa in Sm. C. II. p. 59) and the Sm. C. remarks that there is no emphasis on the number and there may be many more varieties. Br. (S. B. E. vol. 33 p. 305), Kāt. (254-257) and others mention and define the following jānapada writings; *bhāga*- or *vibhāgapatra* (deed of partition), *dānapatra* (deed of gift),

*krayapatra* (sale deed), *ādihānapatra* or *ādhipatra* (deed of pledge or mortgage), *sthitipatra* or *samaitipatra* (deed of convention, which is made by the inhabitants of a village or city or the members of a corporation or guild by mutual agreement for settling their conventions), *dāsapatra* (deed of bondage to serve executed by a person devoid of food or clothing), *ṣṇalekha* or *uddhārpatra* (bond of debt promising return at a future date with interest), *viśuddhipatra* (deed of purification given to a person with the attestation of witnesses when a penance for a sin has been performed), *sandhipatra* (deed of peace when a compromise in the presence of leading people after a charge of the commission of a crime has been made), *simāpatra* (deed of boundary when a dispute about it is settled), *upagata* (a receipt passed by the creditor to a debtor on payment of the whole or part of a debt, Yaṣ. II. 93), *anvādhipatra* (a sub-mortgage i. e. where the mortgagee or pledgee mortgages or pledges the property or thing to another and hands over the former deed to his own creditor). The two branches of private documents (*jānapada*) are either *ciraka* or not *ciraka*; *ciraka* is defined as a document written by hereditary scribes residing in the capital, who are approached by the parties and bearing the signatures of the parties and witnesses and the names of their fathers (Sāṅgraha q. by Sm. C. II. p. 59, Par. M. III. p. 127). Vide n. 437 above and Śukra II. 299-318 and IV. 5. 172-177 for definitions of these and other kinds of documents. But acc. to Vyāsa quoted by Sm. C. II. p. 59 private documents are of eight kinds viz. *ciraka*, *upagata* (a receipt), *svahasta* (written by the executant himself), *ādhipatra*, *krayapatra*, *sthitipatra*, *sandhipatra*, *viśuddhipatra*. Some works like the *Vyavahārasāra* (p. 69) and the *Mit.* write the word as *ciraka* and not *ciraka*. It was so called (viz. *ciraka*) probably because it was written on the bark (of the bark of the birch or some other tree). If the proper word is *ciraka* then it was employed because being executed by scribes appointed by the king, it had validity for all time (*cira*) as compared with purely private documents. 'Ciraka' in this last sense seems to be equal to 'sthānakṛta' of other writers.

Nār. <sup>as</sup> IV. 136, Viṣṇu. Dh. S. VII. 11 and Kat. (252) require that a document is held valid which is not adverse to the custom of the country, the contents of which follow the rules

438. देशाचारानिर्दिष्टं यद्व्यवहारादिभिर्विद्वज्जनैः । हायमार्गं स्वयं लेखनमपि कुतः कर्तव्यम् । मातृ IV. 136: देशाचारानिर्दिष्टं व्यवहारादिभिर्विद्वज्जनैः कृतं कर्तव्यम् । विष्णुधर्मसूत्र VII. 11.



regarding pledges (and other transactions) and the sequence of the sense and of the words in which is not contradictory or confusing. Sm. C. II. p. 59 applies the word<sup>439</sup> *pañcārūḍha* (on which five are recorded) to documents that are signed by the creditor, the debtor, two witnesses and the scribe. The *Sarasvativilāsa* p. 114 holds that *pañcārūḍhatva* consists in having the creditor, debtor, witnesses (as one item), scribe and the matter to be written. *Hārita* and *Vyāsa* (q. in Sm. C. II. p. 59) employ the dual (*sāksinau*), while *Yāj.* II. 87 employs the plural. Therefore ordinarily two witnesses sufficed, but in very important writings there should be more witnesses. *Viṣṇu* reads 'asamāḥ' in *Yāj.* II. 87 and requires three witnesses as the minimum. *Nār.* IV. 137, *Viṣṇu*<sup>440</sup> Dh. S. VII. 6-10, Br. (S. B. E. vol. 33 p. 307 v. 23.), *Kaṭ.* (271) state that a document is invalid that is executed by a person intoxicated, by one already charged (with an offence), by a woman, a minor, that has been brought about by threats or deceit or coercion, by one dying, by one diseased, by a lunatic, or by those that are dependant. *Viṣṇu* Dh. S. (VII. 8-9) and *Kaṭ.* 273 (q. by V. M. p. 338, *Aparārka* p. 686, *Par. M.* III p. 131) state that a document may be held invalid owing to defects in the witnesses or in the scribe or to the fraud of the creditor or executant.

*Nār.* IV. 145, *Kaṭ.* (306-307), *Saṁvarta* (both quoted by *Aparārka* pp. 691-692) and Br. (S. B. E. 33 p. 309 verse 31) say that no oral evidence should be allowed to contradict the (terms of a) document, that the mode of proving (a matter) by a document is always superior, that a writing can be refuted or superseded only by another document relating to the same matter and not by the oaths of witnesses and that if oral evidence

439. उच्यमानां धर्मार्थं च साक्षिणौ लेखकस्तथा । समवायेन चेतोर्वा लेखं कुर्वीत नाग्यथा ॥ इति हारीशेन लेखनमये साक्षिणादिप्रवृत्त्यात् । एवं चान्यकुललेखकस्योच्यमानां धर्मार्थं साक्षिण्यलेखकस्य प्रवृत्त्युपपादकत्वात् साक्ष्यार्थं यच्च लिखितं तत्रैव साक्षिण्यलेखकस्यैव कार्यं यथाहारीशौ इति मन्यमानम् । स्मृतिच० II. p. 39.

440. तद्व्यवहारादिमननात् । उपपिष्टताश्च सर्वं यत् । इति कर्मवृत्तसाधनवृत्तिर्न समालोक्यते । तदुक्तिर्येन लेखकेन लिखितं च । स्त्रीयाद्यावत्तद्व्यवहारस्योपपत्तिरिति ह्येतत् । विष्णुधर्मवृत्त VII. 6-10 : स्त्र्यर्पुजिह्वभिर्वातस्त्रीमत्तस्य सनादौ ; निशोपपिष्टात्कारकं तत्त्वं न सिध्यति । बुद्ध, q. by स्मृतिच० II. p. 62. *Manu.* (VIII. 165 and 168) declares that fraud vitiates all transactions. Compare with *Viṣṇu* Dh. S. sections 10-12, 15-18 of the Indian Contract Act [of 1872]. In I. L. R. 3 Bom. 29 at p. 104 'strimatta' in Br. (S. B. E. vol. 33 p. 307 v. 23) is taken as one word and rendered 'under female or aphrodisiac influence', which is not correct as appears by the texts of *Viṣṇu* and *Kaṭ.*, where the two words are separated by other words.

were allowed to overrule the force of documents there would be confusion and an end to all written transactions<sup>441</sup>. If there is a conflict among documents then a *jānapada* document (written by a scribe and attested) is superior to one written in the hand of the executant himself and a public document is superior to a *jānapada* one (Vyāsa q. by Sm. C. II. p. 66, S. V. p. 122).

Yāj. II. 91, Nār. IV. 146 and Kāt. 312 (q. by Aparārka p. 687) prescribe that when a document is in another country or when it is illegibly written, when it is lost or its letters have become indistinct (by lapse of time or other causes) or it has been stolen or is crushed or burnt or shattered into pieces, another document may be caused to be written (if both parties agree); but if they do not agree and the contents have to be proved or if the executant denies his signature, then Nār. IV. 142 and Kāt. (282 q. by Sm. C. II. p. 63) say that time may be given to bring it from the foreign country or the contents may be proved by the evidence of the attesting witnesses or of the scribe or of those that have seen it. This shows that the *śūrti* law required the production of the document itself as primary evidence, but allowed secondary evidence only in exceptional cases.<sup>442</sup> If a document belonging to one man is produced by another the latter has to explain his custody of it<sup>443</sup> (Vyāsa q. by Aparārka p. 690, Sm. C. II. 66). Kāt. (308 q. by Sm. C. II. p. 65) says<sup>444</sup> that just as the reflection of a person or thing made in a mirror is seen as if it were real though it is unreal, so clever people can fabricate documents resembling (the genuine writing of a person). Vyāsa (in Aparārka p. 688, Sm. C. II. 65) and Bṛ. (S. B. E. vol. 33 p. 307

441. न द्विष्ये साक्षिभिर्वापि हीयते लिखितं कचिद् । लेखपत्रम् सदा अहो हतो नाप्येन हीयते ॥ तदुक्तिरहितेनैव तद्विनिर्दिष्टेन वा सदा । लेखकित्वा निरस्येत न साक्षिशपथो कचिद् ॥ कात्या. q. by अपरार्क p. 692; वाचिकैर्यदि सामर्थ्यमकारणानां निवृण्वते । किदाणां सर्वनामः स्थादनवस्था च जायते ॥ संवत् q. by अपरार्क p. 692. Compare sec. 92 of the Indian Evidence Act. The poet Māgha gives expression in his own laconic way to the same idea in निर्धारितैर्देहेन खलुस्त्वा खलु वाचिकम् । मिश्रपालवध II. 70.

442. Compare sec. 63 and 65 of the Indian Evidence Act about the meaning of secondary evidence and the circumstances under which it can be given.

443. यज्ज्ञाप्य कृतं लेखमग्नहस्ते प्लुश्यते । अवर्पतेन वक्तव्यं यद्वराममनं ततः ॥ यजुस् q. by अपरार्क p. 690.

444. दुर्पणदर्शं यथा विम्बमसत्तदिव दृश्यते । तथा लेखस्य विम्बानि कुर्वन्ति कुप्राज्ञा अनाः ॥ कात्या० in स्मृतिच० II. 63, स्प. प्र. p. 149, स्प. शि. p. 91 (It attributes the verse to Nārād).



vy. 20-21) say the same thing and add that documents have to be carefully scrutinized and that no certain conclusion can be established by documents alone (in every case), that women, minors and illiterate persons are deceived even by their relatives by the fabrication of documents bearing the names of these (women and others) and that this has to be investigated with skill. When there is a doubt about the genuineness of a document, it can be established by comparison with other documents admitted to be written or signed by the same person, by ratiocination, by the probability of the two parties being together at the time of the transaction, by citing the attesting witnesses,<sup>445</sup> by the peculiarities or flourishes in writing certain letters or making certain signs (in the writing questioned and in other admitted writings), the previous transactions between the parties (or their subsequent conduct), and the source of the acquisition of the subject matter in dispute (Yāj. II. 92, Viṣṇu Dh. S. VII. 12, Nār. IV. 143-144, Kāt. 283 q. in Mh. on Yāj. II. 92). Viṣṇu Dh. S. (VII. 13) and Kāt.<sup>446</sup> 285-286 (q. by Aparārka pp. 689-690) prescribe that if the debtor, creditor, witnesses or the scribe be dead the authenticity of the document has to be ascertained by (a comparison of the signatures on the disputed document) with other specimens of their handwriting or signatures or other documents executed by the debtor. Kāt. 287 (q. by Aparārka p. 689, Sm. C. II. p. 64 and Par. M. III. p. 134) states the striking<sup>447</sup> rule that when a document bears the royal seal, that document is presumed to be authentic, even though all the three (viz. the debtor, the witnesses and the scribe) are dead. This shows that documents bearing the king's seal or that of royal officers were regarded as *prima facie* genuine and this rule is analogous to the provisions in sec. 79 of the Indian Evidence Act and sections 59-60 of the Indian Registration Act. That even copperplate grants were sometimes forged is clear from the reference in the Madhuban plate of Emperor

445. Vide sec. 68 of the Indian Evidence Act about the proof of attested documents.

446. अथ दण्डस्वमापन्नो लेखकः सह साक्षिभिः । तत्सहस्रतादिभिस्तैवा विद्युत्पत्रेषु  
॥ संभवः ॥ अतिवहस्तमन्देहो जीवतो वा मृतश्च वा । तत्सहस्रतादितैरप्येः पत्रैस्तद्वहस्त-  
विर्णयः ॥ कात्यायनः quoted by अद. मा. p. 339, अपरार्क pp. 689-690, दण्ड. मा. III.  
p. 134; स्मृतिच. II p. 63 ascribes the 2d to हारीत. Compare sec. 69 and 73  
(for proof of handwriting by comparison) of the Indian Evidence Act.

447. महदेवि यदा लेखे सुताः सर्वदे ते रिपताः । लिखितं तन्मार्गं तु मृतैश्चपि दि-  
तेषु च ॥ कात्यायनः quoted by अपरार्क p. 689, स्मृतिच. II p. 64.

Harṣa (E. I. VII. p. 155, 158), and from the Tārāchandi Rock Inscription (in Bihar) of Mahānāyaka Prātāpādihavaladeva (in E. I. XX. Appendix No. 340) of *sabukt* 1225 which declares that a certain copperplate purporting to be issued by Vijayacandra of Kanoj was forged. Vide Fleet in I. A. vol. 30 pp. 201-223 for many forged grants. Verses (variously attributed to Kāt. or Brhaspati by the digests) state that when a loan (recorded in a document) has not been expressly claimed by the creditor able to claim from a debtor who is able to pay off and who is at hand, the document loses its validity because a suspicion arises that the debt has been paid off and that a document executed more than thirty years before which has never been seen (by any body) nor read out (by the creditor to any body) does not attain validity even though the witnesses on it are living. Nar. IV. 141 is very similar to this last. Kāt. 298-299, 301 (q. by Par. M. III. 136, Mit. on Yaj. II. 24, Aparārka p. 690-691) prescribe that if no objection is raised for twenty years as regards a patent fault in a document of debt or pledge or of the settlement of boundaries, then the document ceases to be voidable. Kāt. 275 and Br. (S. B. E. vol. 33 p. 302 v. 25) both quoted by Aparārka p. 671 and V. P. p. 122 require that the latent defects in documents or witnesses must be declared (pointed out) by the disputant at the (proper) time (i.e. when they are produced), while patent defects may be considered by the *sabhyas* at the time (of the consideration of the evidence) by reference to the rules of the *sāstra*. Yaj. II. 93-94, Viṣṇu Dh. S. VI. 25-26<sup>††</sup> prescribe that when a debtor pays part of a debt, the debtor should write on the back of the document how much he paid or the creditor may hand over to the debtor a writing of receipt signed or written by himself, particularly when the original document is not at hand, and when the whole debt is paid or the contract is fully performed the creditor should tear off the document or should execute another document in order to make clear the fact of satisfaction.

The fabrication of royal edicts and private documents was so much condemned by the sentiments of society that Manu IX. 332 and Viṣṇu Dh. S. V. 9-10 prescribe the extreme penalty of death for such offences as in the case of the murder of women, minors and brāhmaṇas. Yaj. II. 295 (= Matsya 227. 202)

††. लिखितार्थं प्रविष्टे लिखितं पाठयेत् । असमग्रदाने देयवार्त्तविधौ चोत्तरार्त्तं  
सल्लिखितं दद्यात् । निष्ठाधर्मसूच VI. 25-26.



prescribes the highest fine for him who adds to or writes less than what was intended to be declared in a royal grant or edict. Śaṅkha also prescribes death or the excision of a limb for fabrication of documents (q. by V. R. pp. 298, 369).

For detailed treatment about documents in ancient and medieval India two papers in the *Annals of B. O. R. Institute*, vol. IX, pp. 49-81 and in the *Journal of the Andhra Historical Society*, vol. 18 pp. 203-232 may be consulted.

## CHAPTER XII

### BHUKTI OR BHOGA (possession).

According to Gaut. X. 39 a man becomes an owner by inheritance, purchase, partition, seizure (appropriation of forest trees and other things which have no owner) and finding (i. e. appropriation of lost property the owner of which is unknown). Gaut. (X. 40-41) adds that in the case of brāhmaṇas acceptance (of a thing donated) is an additional mode (of becoming an owner), that conquest in the case of a kṣatriya and gain (by trade or labour) in the case of a vaiśya or śūdra are also additional modes. Vas. 16. 16 mentions eight modes. Br. (quoted in V. P. p. 153, Aparārka p. 635, S. B. E. vol. 33 p. 309 v. 2) mentions seven modes of acquiring immovable property viz. by learning, purchase, mortgage, valour (i. e. conquest), through the wife (as dowry), inheritance (from an ancestor) and succession to an issueless kinsman. Nārada (q. in Sm. C. II. p. 70) mentions the same except mortgage. None of these expressly says that long possession is by itself a source of ownership. Great divergence<sup>449</sup> has prevailed throughout the centuries among the sages and digests about the relation of title and possession and about the length of possession necessary for making a person secure in his right to property by reason of possession. Possession (*bhukti*) may be with title (*sāgamā*) or without title (*anāgamā*). Āgama means 'origin' or 'source of title' such as purchase or simply 'title'.<sup>450</sup> Manu VIII. 200, Yāj. II. 27, Nār. IV. 84 employ that word in that sense. Vide Kāt. 317 (q. in Sm. C. II p. 73 and Par. M. III p. 141). If property is held in one of the modes of acquiring ownership stated above and there is also possession, one's right to that property is indefeasible (Nār. IV. 85, Br. q. by Sm. C. II. p. 70, S. B. E. 33 pp. 309 and 312 v. 3 and 22), but possession without a clear title

449. Vide *Lalubhai v. Bai Anis* I. L. R. 2 Bom. 299, 304 ff., where Mr. Justice West enters on an elaborate analysis of the doctrines of the Mit. and the Vyavahāramayākha on title and possession.

450. स्वप्नेतः पत्तिग्रहकपादिः आगमः । मित्रा. sm. पा II. 27 : आ सम्पन्नमप्यने वाप्यते स्वीकृतं येन स आगमः कृपादिरिति स्ववदामनातुका । आगमः साक्षियवादिभिरिति दीपकलेका । आगमो धनार्जमोवापः कृपादिरिति मेघिनाः । व्यवहारतत्त्व p. 225.



does not lead to (or ripen into) ownership<sup>431</sup> (with certain exceptions to be noted later on). Vyāsa and Pitāmaha<sup>432</sup> declare that possession in order to be valid must have five characteristics viz. it must have title behind it, must be of long standing, unbroken, free from protest (by another person) and in the presence (i.e. before the very eyes) of the opponent (q. in Mīl. on Yāj. II. 27 and Aparārka p. 635). Even title, if not accompanied by some slight possession, has no strength, while title is stronger than possession not handed down hereditarily (Yāj. II. 27). Nār. IV. 85 states that possession becomes strong when backed by clear title. These passages present some difficulty and make title and possession depend on each other. Nār. IV. 77 states that even if there be a document or witnesses to support a man's title, when there is no enjoyment, particularly in the case of immovable property, there is no validity. All that is meant is that a transfer without possession though under a deed or before witnesses is risky and that title and possession lend support to each other as stated by Nār. IV. 84-86, Br., Hārita and Pitāmaha.<sup>433</sup> Nār. (IV. 86-87) declares that one who pleads mere possession and no title at all should be considered a thief on account of his putting forward the deceptive plea of possession (which even a thief can assert) and that the king should punish as a thief one who enjoys a property even for hundreds of years without title. All that this last verse means is that the person in possession must prove legal origin or such a long possession that there is no possibility of an inference that the possession

431. धुरथा केवलथा नैव धूमिः सिद्धिमवाप्नुयात् । आगमेनापि मुद्रेण द्वाभ्यां सिध्यति नाप्यथा ॥ बृह. q. by स्तुतिच. II. p. 70.

432. साममो द्वीर्षेकालश्चापिष्टेदोऽपरयोन्मिताः । परधर्मनिधानञ्च पञ्चाङ्गो भोग इवपुनः ॥ यथास q. by स्तुतिच. II. p. 71. This is also cited by the Mīl., on Yāj. II. 27 (without name). Pitāmaha has almost the same words साममो द्वीर्षेकाला च विच्छिन्नपरयोन्मिताः । परधर्मनिधाना च धुक्तिः पञ्चविधा स्तुता ॥ स्तुतिच. II. p. 70.

433. विश्वदग्धकषाधाभरिषधशौर्षयेदमात् । पाने सप्तविध भोगः साममः सिद्धिः नाप्नुयात् ॥ बृह. in स्व. नि. p. 126, स्व. म. p. 133; व मुद्रेण विना शाखा अन्तरिक्षे यरोहति । आगमस्तु भवेन्मूलं धुक्तिः शाखा प्रकीर्तिता ॥ हारीतः । आगमेन विना धुक्तिर्वगमो धुक्तिर्वजितः । तयोर्गमोन्म्यसम्बद्धत्वाद्वाप्यत्वं व्यवस्थितम् ॥ पितृमह, both q. by स्तुतिच. II. p. 70, स. नि. p. 131. The स्व. नि. which regarded *tripuraṣa-bhoga* as equal to 60 years (p. 128) briefly explains the strength of title and possession as follows: आद्यविक्रयानामन्यापहर्षे भोगस्य तद्वाङ्मृत्पात् । द्वितीये भोगानपयोः सामस्य । तृतीये धुक्तेः सामस्यम् । चतुर्थे इवपुनः पञ्चाङ्गभोग इव अनामं नाप्यमापेक्षेति सिद्धम् । p. 132.

of his ancestor originated is wrong. Delivery of possession was the principal mode of transferring ownership in ancient times in almost all systems of jurisprudence and so possession was given great weight as evidence of ownership.<sup>454</sup> The Mit on Yaj. II. 27 makes the position clear. In the case of a gift or sale there must be the cessation of the ownership of the transferor and the arising of the ownership of the transferee. This last occurs only when the transferee accepts the property and not otherwise. Acceptance is mental, vocal and physical (i. e. the acceptor makes a resolve to accept, says that he accepts and takes physical possession). These three may exist in the case of such movable articles as gold, clothes &c. But in the case of a field physical acceptance is not possible except by enjoying the fruits or profits thereof. Therefore in order to make a gift or sale perfect there must be some slight possession at least. In the absence of such possession mere title is weak. Title may succeed against the man in possession who has no title and who has not been in possession for the prescribed period (such as three generations). If the possessor proves possession for that period he will succeed against one who has bare title and no possession whatever. If it is known or proved that a man purchased from A but got no possession and that another purchased from A subsequently and got possession (but was not in continuous possession for the prescribed period) the prior title though without possession will prevail over the later one, acc. to Yaj. II. 23. But when it is doubtful as to which title is prior and which posterior the one with possession will prevail. Where the possession has been uninterruptedly with a man's ancestors for three generations he will succeed against one who has bare title. Therefore possession was not absolutely indispensable for transfer even acc. to the Mit. and other works, but title without possession was risky and so possession was insisted upon as it was 'nine points of law'. It follows, acc. to the Mit., that (1) when possession was comparatively of short duration and not supported by any title much weight was not attached to possession and title by itself would prevail against it, that (2) continuous possession for three generations (though there is

<sup>454</sup> In English Law until the year 1845 (8 and 9 Vic. chap. 106, sec. 2) land could in theory be conveyed in no other method than by delivery of possession and no deed or conveyance was in itself of any effect. Vide Salmond's Jurisprudence, 9th ed. 1937, p. 620.



nothing to show there was title to begin with ) will prevail over a mere documentary title and that (3) a prior title with less than the possession for three generations (but with some possession) succeeds over a later title accompanied by possession. Long possession was assumed to have originated in legal title, although owing to lapse of time it was not possible to prove the origin.<sup>455</sup> The main controversy has raged round the question of what is long possession. Yāj. II. 24 literally translated means 'loss of land results in twenty years when it is enjoyed by a stranger before the owner's very eyes and without any protest from him and loss of chattels (results under similar circumstances) in ten years'. Manu VIII. 147-148 and Nārada IV. 79-80 have two verses in common which mean 'If the owner of anything silently looks on (i.e. raises no protest) when it is being enjoyed in his presence for ten years by strangers he does not deserve to recover it (i.e. he loses the thing). When the owner is not an idiot nor a minor and his property is enjoyed within his sight then the property being lost by his conduct (*vyavahāra*) comes to belong to the enjoyer'. Gaut. XII. 34 has almost<sup>456</sup> the same words as Manu VIII. 148. Śāṅkha (in V. R. p. 208) also refers to ten years. These passages apparently mean that at the end of 20 or 10 years' adverse possession by the wrongful possessor the ownership of the original owner is lost and the wrongful possessor becomes the owner. But there are several other smṛti passages where it is said that possession even for a hundred years originating in wrong cannot confer title and much longer periods are required for the loss of ownership and the acquisition of ownership by prescription. Vide Nār. IV. 86-87 cited (on p. 318 above). Nār. (IV. 89) himself says elsewhere that possession requires

455. Under the Law of England 'Time immemorial or time whereof the memory of man runneth not to the contrary' was considered to include the whole period of time from the reign of Richard I. This was a very inconvenient and absurd rule which was abrogated by sec. 1 of the Prescription Act of 1832 (2 and 3 William IV, chap. 71) whereby the rights to any land became absolute and indefeasible by sixty years' uninterrupted enjoyment before that Act (except when the enjoyment was by some consent or agreement made under a deed). By French Law the time of memory was held to extend for one hundred years as done by the MII. and other Sanskrit digesta. Vide Salmond's Jurisprudence (21st ed. of 1937) p. 263-note 7.

456. अजहापोमण्डपनं दशवर्षमुक्तं परैः सन्निधौ धोक्तः ॥ श्रौ. XII. 34; आनयनं दशभोजिपरिधेये दशवर्षमुक्तमप्यत्र राजयिमवात् । शङ्ख ९. In vi. १. p. 208.

to be supported by title only during *smṛtakāla* (during human memory), but in cases beyond human memory possession continued successively for three generations (or ancestors) is proof of ownership even in the absence of a document (or other title). Viṣṇu Dh. S. V. 187 is in similar<sup>457</sup> terms. The Mī. on Yāj. (II. 27) says that *smṛtakāla* is a period of 100 years, as the Veda declares that the span of a man's life is 100 years. For a hundred years it is possible for witnesses to depose to the origin of possession. So if there is possession for less than one hundred years, oral evidence can be adduced for establishing its origin, and title will have to be proved by the possessor and if no oral evidence is adduced to prove title, it is a case in which it may be held as certain that there was no title to begin with. Mere possession is not enumerated by sages like Gautama among the means of acquiring ownership. As the Sarasvatī-vilāsa (p. 124) puts it, long uninterrupted possession only leads to an inference that it originated in title acquired by sale, gift or the like i. e. there arises a presumption of lawful origin<sup>458</sup>. Therefore in order to enable a man to rely on possession alone as proof of ownership it must extend uninterruptedly over 100 years (acc. to the Mī.). The *Smṛticandrikā*<sup>459</sup> (II. p. 72) accepts this meaning, only requiring 105 years' possession instead of 100 years'. Acc. to a *smṛti* quoted by it each generation means 35 years and so when Nārada requires possession for three generations 105 years are meant (acc. to Sm. C.). Viṣṇu Dh. S. V. 187, Kāt. (327) also hold that continuous enjoyment for three generations makes the fourth generation owner of the land. Kāt. (321 q. by Mī. on Yāj. II. 27, Aparārka p. 636) states 'in cases falling within the memory of man it is desirable that possession must be accompanied with title

457. विमिरेत्त वा मुक्ता दुर्बैर्दूरभाषिणि । लेखनाभावेपि तां तत्र चतुर्षः सम-  
वाप्तुयात् । विष्णुधर्मसूत्र V. 187. The same is ascribed to both विष्णु and  
कारवायन by नव. ता. p. 341. The त्वह, मि. p. 130 ascribes it to आश्विमेध.

458. मुक्तिरपि केचिद्विशेषणैर्दुष्का स्वत्वहेतुवृत्तकपदानादिकमव्यभिचार्यादनुभाष-  
यति । अन्वधान्तरापरमाणा कल्पयन्तीत्यनुमानेऽर्थापत्तौ शान्तमर्थतीति प्रमाणमेव । सरस्वती-  
विलास p. 124; these words are apparently taken from the त्वह, मि. p. 73.

459. एतदुक्तं भवति । स्मरणयोगे पञ्चाधिकशतवर्षपर्यन्तातीतकालमध्ये पारम्पर्य-  
मुक्तिः स्वतःप्रमाणायमानममूलैव स्वत्वे प्रमाणमिष्यते । अतः स्वमूलावगतेर्प्राप्तपक्षव्या-  
पारप्रमाणत्वात् । स्मरणयोगे तु नः पञ्चाधिकशतवर्षपर्यन्तातीतकालावाचीनकाले पारम्पर्य-  
स्वदावर्गावगतामममूलिका विनापि मानान्तरावगतामममूलतां स्वत्वे प्रमाणमिति । स्मृतिश्च  
II. p. 71.



(in order to be proof of ownership as to land); but in cases beyond the memory of man possession extending over three generations in succession (is independent proof of ownership), since there is no certainty that there was no title (to begin with)'. Vide also Br. (in S. B. E. vol. 33 p. 313 verses 26-28). 'Three generations' is a vague expression. The great-grandfather, the grandfather and the father of a man may die in the space of ten years and if the great-grandfather took possession wrongfully and all died within ten years of the time of taking possession one after another, the fourth in descent might urge that there was possession for three generations and that he had become owner. Therefore Kāt. in another verse (318, q. by Aparārka p. 636 and V. P. p. 155) laid down that unbroken possession for three generations extending over sixty years becomes firm (independent means of proof of ownership). Thus *trijarasa-bhoga* or *pārakramāgata-bhoga* (in Yāj. II. 27) means the same thing as possession continuing from a time beyond human memory (*amārta-kāla*) and is equal to 60 years acc. to Kāt., Vyāsa and a few other smṛti writers<sup>460</sup>. Nārada (q. by Aparārka p. 636) says that as regards possession one generation means twenty years, while Br. (q. by Sm. C. II. p. 72) says it means thirty years. It will be noticed from the above that early authors like Gaut., Manu., Yāj. appear to lay down 20 years' adverse enjoyment of land as sufficient to create ownership, while other and comparatively later authors like Nār. and Kāt. require sixty years enjoyment. In order to remove this conflict and following the maxim that apparently conflicting texts should be reconciled as far as possible, the writers of commentaries and digests from Viśvarūpa and Medhātithi (on Manu VIII. 148) downwards proposed various interpretations of Yāj. II. 24 and similar texts. Some lay emphasis on possession and others on title. There are at least three explanations. Aparārka (pp. 631-632), Kullūka and Raghunandana take the literal sense and say that on 20 years' adverse possession there is loss of ownership (i. e. there

<sup>460</sup>. मुक्ता देवामही मुक्तिः पैतृकी चापि संमता । त्रिभिर्देवविच्छिन्ना विधवा वक्ष्या-  
भिद्वीकी मता ॥ कात्या०, वर्षाणि विद्महे मुक्ता स्वामिनाऽप्यद्विता मता । मुक्तिः सा दीवर्षी  
मुक्तिर्द्विष्टया च द्विषीद्वर्षी । त्रिषौ वर्षी च त्रिष्टुणा न तत्रान्येष्वप्यगमनः ॥ नाराद, both quot-  
ed by अपरार्क p. 636, and स्व. द. p. 155 which ascribes the verses वर्षाणि &c. to  
व्यास, परा. III. p. 142 also ascribes it to व्यास, यत्किमहेन पदेषुक्तं तदनुषेधं विना  
च तत् । तौ विना वरयं विद्या च तद्वयं भोगश्चिरीदयः ॥ व्यास q. in व्यवहारादावुक्ता  
p. 341.

is *vatahāni*)<sup>461</sup>. The 2nd explanation is that the meaning of Yāj. II. 24 is that after 20 years' enjoyment by a stranger, if the owner brings a suit and relies on a document in his favour, he runs the risk of being unable to prove his ownership barely on the strength of the document, since it is possible to argue that, even though he had a document, by his silence he acquiesced in the stranger taking possession and tacitly consented to it. Therefore all that Yāj. II. 24 means or recommends is that an owner should not be negligent (*apśeṣā*) or should not remain silent when a stranger takes wrongful possession. This view was first started by Viśvarūpa among extant writers and it approaches the modern idea of requiring vigilance in the assertion of one's rights<sup>462</sup>; that is there is only loss of the suit (*vyavahārahāni*). This view lays emphasis on a verse attributed to Nār. and the word *vyavahāra* in it and in Manu VIII. 148 and Nārada IV. 80, where the word means lawsuit also, the idea being that the sages declare only what would happen or be decided by the judges in a law court and do not intend to say that the decision would be just or righteous from the higher or the moralist's point. The third view is that of the Mit. (followed by the Vyavahāranayūkha, Mitrāmīra and several others) which<sup>463</sup> explains that the loss is not that of the ownership of the thing itself but of the produce of it (there is only '*phala-hāni*') i. e. if without protest the owner allows a stranger to remain in possession before his very eyes for twenty years and then he brings a suit, he may succeed in getting back his land but he would lose his claim to the profits of the land. The Mit., the Vyavahāramātrkā and V. P. (pp. 157-165) contain very

461. तस्माद्याज्ञवल्क्यादिष्वनाद्विंशतिवर्षदशवर्षादिकालेभोग एव स्वत्वं जन-  
यति तथा कालमातिथलेन बीजमद्वयं जनयति तत्रैव कुसुममिति स्वामिना व्यापशिर्यक्तं  
शास्त्रोक्तकालीनभोगात्तथाऽप्यमग्नयः पयति यथा जपेन राज्ञः परराष्ट्रघने क्षति । एवमेव  
बीकरवात्कपोमलाकथमद्वैतमहाशुभापिकुलकमहत्त्वमेवमरमनिषधर्ममोपाध्यायधुतः ।  
एवहारोपि तादृशेन । एवादिष्वज्ञवल्क्यादिष्वनाद्विंशतिवर्षदशवर्षादिकालेभोग एव स्वत्वं जन-  
यति तथा कालमातिथलेन बीजमद्वयं जनयति तत्रैव कुसुममिति स्वामिना व्यापशिर्यक्तं

462. हाजिब्याय निश्चितयत्नेनामीशयमसाधनमात्रस्याभिधेयम् । न पुनर्धृष्ट्याही तत्कले  
या स्वतन्त्रम् । नोपेक्षामात्रेण स्वाध्यायवैयर्थ्यमुक्तवान् । स्मृतिच ॥ प. 68 : परैर्नृपमानं नोपे-  
क्षणीयमित्यभिधातः । ... उपेक्षाभिधेयमात्रं चेत्तत् । हाजिब्यनं तु निश्चयमात्रमेवोपेक्षकम्  
अथवास्वतन्त्र्यमप्योपेक्षामात्रमिति कलं तद्वैद्यः प्राह पुनर्यम् । निष्कर्षः ७९ वा. ॥ 26 : तद्वैद्यो  
कुतस्तन्त्रं नृपणीयमात्रं सिद्धम् । कारोतिपक्षे पुनोक्तो व्यवहारो न सिध्यति ॥ भाष्यं १. ७५  
अनार्क (p. 632) । स्मृतिच ॥ ७९.

अथार्क (p. 632)। स्मृतिक १७, ०८०.  
४६३. नरसहस्रनाम्न्युपेक्षात्तत्वात्पादाप्रत्ययान्न तन्वलाद्विज्ञातेष्वर्थात् फले गर्भे च लक्षण  
इति नियतम् । मिता.



elaborate discussions on Yāj. II. 24; but considerations of space forbid any further reference to them. The V. M.<sup>164</sup> connects Yāj. II. 24 with the preceding verse (viz. that in mortgages, gifts and sales a prior transaction prevails over a later one) and remarks that this verse (Yāj. II. 24) says that if a person after a gift, sale, or mortgage to him allows the property to remain with the seller, donor or mortgagor, who subsequently transfers it to another with possession and the latter holds it for twenty years, then the first dealing though prior is of no avail (as it is not accompanied with possession for 20 years). Śrīkara (as stated in the Vyavahāramātrkā) tried to reconcile the conflicting *smṛti* texts by holding that in twenty years the real owner lost ownership if he was present and did not protest while a stranger was in possession, but passages speaking about possession for three generations (or sixty years) applied only where the owner was absent. The Mit. and others point out that Yāj. II. 24 (who employs the words 'paśyataḥ' and 'abruvataḥ') conveys that if a stranger takes possession while the owner is absent or if the owner protests, then even 20 years' possession does not lead to the loss of anything. The text of Nār. IV. 87 quoted above (p. 318) shows that the saga held that possession for several hundred years even would not avail the possessor if it is certain or established that the possessor had no title at all to begin with or that his possession started wrongfully. This text is emphasized by those who favour title and want to discourage persons benefiting by their own wrongdoing. But there are other *smṛti* texts of a contrary tenor. For example, Nār. IV. 91 himself says 'whatever has been enjoyed even unlawfully for three generations (i. e. by three ancestors) including the father cannot be recovered by the owner from the person (who is the 4th in succession) because it has gone through three lives in succession'; a text of Hārta states 'what has been enjoyed by three prior ancestors without any title whatever cannot be recovered back (from the present holder, who is 4th), since it has descended successively through three generations'. These two are relied upon by those who hold long possession as leading

<sup>164</sup> अथ तत्सार्थः । कीदाहितमतिदृष्टीर्माविधनमुनिगतः परस्मै दशविंशतिवार्षिको ज्ञेयः समाकारणजडपौण्ड्रत्वाद्यमावेष्टुपेक्षितत्वाद्वापि कुरुते । स्वोपभोगार्थं तेन कयास्तस्य च तेनोपेक्षितत्वादिति ह्यर्थोनामभिप्रायः ।...तस्मात् 'पश्यतोऽब्रुवतः' इति वचनं 'आधी मति-  
यवे क्रीते' इत्यस्यापवादकम् । आधिपत्यकचनमतिग्रहकर्तृनामाहितकीयमतिदृष्टीनेषु नवत्य-  
दिषु दोषेषु दशवर्षाणि परभोगोपेक्षया स्वत्वहानिः । तूर्णं तु विंशतिवार्षिकी । तेन वचना-  
कारणानेनाप्यारिता उपेक्षा कार्यभूता स्वत्वहानिः ज्ञापयति । व्यवहारमातृका p. 348-49.

to an inference of title (*tripurari-bhuktivādinah*, as Medhātithi on *Mam* VIII. 148 calls them). These like the *Vyavahāratattva* and *Vivādacandra*<sup>465</sup> who rely solely on possession boldly say that long possession even originating in wrong leads to ownership. Medhātithi says 'there can be no memory of the origin of title when there has been possession for hundreds of years and (if title had to be proved for the origin of such possession) a king may resume villages enjoyed by ancient temples, *brāhmanas* and *mathas*; therefore ancient possession is evidence of ownership because it makes it extremely probable that the ancient possession originated in gift or the like'. The *Mit.* on *Yāj.* II. 27 (which is *avacandī*) refers to all the three views, refutes the first two and accepts the view of loss of profits. It does not literally interpret the texts of *Hārita* and *Nārada* quoted above, takes them to be over-statements and intended to convey that continuous possession for over three generations cannot be interfered with even if there is no clear proof of the origin of title. In modern India under the Indian Limitation Act (IX of 1908) the tendency is to prescribe the very short period of twelve years for adverse possession in order to defeat a title, following the English Real Property Limitation Act of 1833 (3 and 4 William IV chap. 27), sec. 2 of which insisting on vigilance by every one about one's rights however prescribes the period of 20 years within which to bring an action for recovery of land. Modern case law has rather gone too far and sets a premium on wrongful possession by holding that it is not necessary that adverse possession should have been brought to the knowledge of the real owner<sup>466</sup>. Ancient Hindu lawyers put down the tendency to usurp another's property and placed many obstacles in the way of the wrongful possessor.

It may be noted that there were a few rare texts that referred to very short periods for possession causing loss of

465. अन्वायेनापि पित्रादिद्वयमुक्तो योगः प्रमाणमेव—अन्वायेनापि दशसुक्तं पित्रा पूर्वतरेष्वभिः । न त्वष्टवस्यमाकर्तुं कस्यचिदुत्पत्तयत् ॥ (आश्व १. ११) इति वचनात् । विवेति पित्रा सहोदर्यः । अन्वायेनापि अन्वायानिश्चयेनार्थः । तेन परतुतो योग इत्यायानीति नान्वायप्रयोगः प्रमाणमिति केचित् । अन्वे तु वचनवत्तादुर्वचिषोऽन्वायप्रयोगोऽपि प्रमाणमेवासाधुः । चरनः पक्षोत्र समीचीनः । विभिरेव वदः सुक्ता उत्पत्तयुत्पत्तयिभिः । देव्यानापि तां तत्र चतुर्थः समवाप्त्याद् इति वचनात् । निवादचन्द्र p. 134. Vide note 457 above for the verse विभिरेव.

466. Vide *The Secretary of State for India v. Debendra Lal Khan* 61 I. A. p. 78 at p. 82 (=36 Bom. L. R. 249) and *Srischandrase Naidu v. Baijnath*, 62 I. A. 40 at p. 44 (=37 Bom. L. R. 323).



title, viz. 3 years for immovable property (provided there was no permissive origin, *kṣamūlīnā*) or one year for corn, cattle and other movables<sup>467</sup>. This idea being opposed to innumerable texts was explained away as merely conveying the great importance of possession. Marlot states<sup>468</sup> that cows, beasts of burden, ornaments that are borrowed through friendship should be returned within four or five years, otherwise the owner would lose them. This is opposed to Manu VIII. 146 and other texts and so is explained as being applicable only if there is no sufficient cause for allowing them to remain with the borrower. The ancient Roman Law was very like this. Before Justinian the Roman Law gave the ownership of a thing by quiet possession *bona fide* and founded on good title if maintained during one year over movables and during two years over immovable property<sup>469</sup>. Justinian altered this and provided that possession during three years gave ownership of movables and possession during ten years (if parties resided in the same province) or during twenty years (if they did not) gave the ownership of immovable property.

Br. (S. B. E. vol. 33 p. 314 verse 31) lays down the proposition that if a person has title and is already in possession and is dispossessed by another then he may succeed in a lawsuit on the strength of his prior possession provided the dispossessor does not establish continuous possession for three generations<sup>470</sup>. This is similar to a suit in ejectment contemplated by Art. 142 of the Indian Limitation Act.

Br. (S. B. E. vol. 33 p. 310 v. 11) and Kāt. 335 (both quoted by Aparārka p. 637, V. P. p. 166) state that what is enjoyed by a man's agnates and cognates and his own people does not pass to their ownership by their mere possession; one should regard

467. अथ बृहस्पतिर्विशेषमाह । विषयं मुख्यं येन समया प्रचारिता । तस्य सा भाव-  
हर्तव्या समादिष्टे न चेद्देव । अतश्चाह्वयनचान्वादे वर्षाद्वाग्निमश्वयुतात् ॥ एतच्चने  
मुक्तेरादुरार्यं पञ्चमूले (न 1) एतच्छेयं बहुमतिप्रकाशेति वरद्वाराजः । स. वि. p. 133.  
Vide स्वय. नि. p. 132 from which this is taken, which introduces these verses  
with the words 'अथ दक्षाध्यायं बृहस्पतिः'. It is probable that the work of  
Br. on *vyavahāra* had five *adhyāyas*.

468. धेनुवाक्यात् कुर्मं पाचितं मीतिकर्मणा । अह्नाज्जहिकं देवमग्धया हानिमाप्नु-  
यात् । मरीचि in स्मृतिषः II. 69, वरा. मा. III. p. 148 (reads घनवाक्याः).

469. Vide Sandar's Introduction to the Institutes of Justinian, sec. 72.

470. सप्तमि निष्कले सामना मुक्तिः प्रमाणमिव बृहस्पतिः । मुक्तिर्बलवती शस्त्रे  
क्रान्तिरुक्ता विस्मयी । विविधवापि हि सा ज्ञेया या तु पूर्ववसाधिता ॥ इति । वरा. मा.  
III. p. 144-145, स्मृतिषः II. p. 73.

possession (as leading to ownership) in cases other than these. Pitāmaha states that possession by a stranger is powerful, but possession by members of one's own family has certainly not the same force<sup>471</sup>. This appears to adumbrate the principle of modern law that possession by one co-owner or one tenant-in-common is ordinarily the possession of all co-owners and the mere fact that the profits of a property have been enjoyed by only one co-heir or tenant-in-common for many years does not by itself amount to the ouster of the other tenants-in-common<sup>472</sup>. It is stated in Gaut. XII. 35 that property which is enjoyed for a long time by a śrōtriya, an ascetic or a king's officer is not lost to the owner by that enjoyment, since the owner may have thought that he would reap long-enduring spiritual merit by the first two enjoying this property (such as a vacant house) or that he might be prevented from asserting his right from fear (of the royal official). Compare Br. (S. B. E. vol. 33 p. 311 v. 12),<sup>473</sup> Manu VIII. 149 (= Nār. IV. 81 and Vas. 16. 18), Yaj. II. 25, Br. (S. B. E. 33 p. 312 v. 21), Kāt. (330) state the following exceptions to the rule of loss by long possession; a mortgaged or pledged property, boundary, minor's property, an open deposit, a sealed deposit, women (female slaves), the property of the king i. e. (of the State) and the property of a brāhmana learned in the Veda are not lost by the possession of another (for twenty or ten years referred to in Manu VIII. 147 and Yaj. II. 24). Manu VIII. 145 provides that neither a pledge nor a deposit can be lost by lapse of time and that both are recoverable even if they have remained long (with the pledgee or depositor). Yaj. II. 25 adds to the above list the properties of idiots and of women. Nār. IV. 83 emphatically states that women's property (strī-dhana) and state property (land) is not lost even after hundreds of years, when it is enjoyed without title. Kāt. (330) adds to the above list temple property and what is inherited

471. सवामिभिर्भागैश्च बहुभुक्तं स्वजनैस्तथा । भोगाश्च न सिद्धिः स्वाद्धोगमायस्य  
कल्पयेत् ॥ कात्यायनः, अस्यामिनाः तु बहुभुक्तं पुरोषोपायनादिकम् । सुहृदभ्युक्तं च न  
पश्येत्तु हीनो ॥ सुहृः, both quoted by अपरार्ण p. 637. एव. नि. pp. 128-129,  
एव. य. p. 166, विवादचन्द्र p. 135 (2nd verse); the first is ascribed to both सुहृ,  
and कात्यायन by एव. नि.; सुविधैर्लब्धो लब्ध भोगाः च न भवेत्, स्वगोचरे भोगिनां सुविधै  
जनां शाश्वतो भोगाः । पितृमह in स्मृतिच. II. p. 69.

472. Vide I, L. R. 46 Bom. 213, 31 Bom. L. R. 199 and 1030  
(P. C.), 47 Cal. 274 for this proposition.

473. धर्मोऽस्य भोगिवे स्वाह् भयं स्वाह् राजपूदये । स्वेहः सुहृद्व्याप्येद् भुक्तमेतेन  
हीनो ॥ पुर. in स्मृतिच. II. p. 69, एव. भा. III. p. 149.



from the father or mother<sup>474</sup>. All systems of jurisprudence throw protection round the interests of minors, persons of unsound mind and others similarly situated and provide longer periods of possession for loss of their right. The Mit. on Yāj. II. 25 gives reasons why the several exceptions are made: in the case of a pledge or mortgage the property is enjoyed by the pledgee or mortgagee under an agreement and so there is no fault on the part of the owner if he remains quiet while the property is being enjoyed by the creditor; boundaries between villages can be easily established by such signs as trees (growing on the border), streaks of chaff and coal (buried underground); deposits are entrusted to a person out of confidence for being preserved and not for enjoyment; idiots and minors are ignorant or incapable of understanding their rights; the king being engrossed in numerous state affairs may not be able in time to look into the question about possession of state properties; women on account of their ignorance and timidity may not assert their rights and a learned brāhmana being devoted to learning, teaching and performance of rites and duties may have no time to go to law. In modern times also the law favours minors and other persons as indicated in the note below<sup>475</sup>. Kat. (331-334 q. by Par. M. III, p. 148, Sm. C. II p. 69

474. न भोमे कल्पयेत्कीमु देवराजधनेषु च । नातभोविपचिते च मातुः विवृतः कमात् ॥ कात्या. quoted in एव. मा. p. 351 (reads भोविपचये च वनेषु विवृतः &c.). एतन्निच. II. 69. उपनिष and निषेध are defined by मातुः as 'असंभवात्तमविज्ञानं ममूढं पक्षिणीयते । तज्जातीयानुपनिषि निषेधं गणिते विवृतः ॥' (q. by mita. on वा. II, 65).

475. Under the Indian Limitation Act, a mortgagor can sue for redemption and possession within 60 years from the time when the right to redeem accrues (Art. 148), though for ordinary suits for possession the period is 12 years; while a pawnor of moveable property has 30 years (Art. 145) from the date of the pawn; if a thing is entrusted to a man for a specific purpose as a trustee then sec. 10 of the Limitation Act provides that no length of time will bar a suit for recovering from him or his legal representatives or voluntary assigns the trust property or its proceeds (*upanidhi* and *nikṣepa* may be examples of trust); a suit on behalf of the Secretary of State for India can be brought within 60 years (Art. 149); sections 6-8 provide longer periods for persons who were minors, idiots or lunatics at the time when their rights were invaded. Under the Real Property Limitation Act of 1833 (13 and 4 William IV chap. 27 sections 16 and 17) a suit could be brought within ten years of the time when the disability ceased in the case of minors, lunatics, idiots, those absent beyond the seas, but no suit can be

(Continued on the next page)

which ascribes them to Nārada ) prescribes that in the case of a *brahmacārī*, engaged in his vow of veda-study extending over 36 years, and in the case of a man who remains in a foreign country in pursuit of wealth, enjoyment extending over 50 years will alone make him lose his property by the possession of another; that when a person has been a student for a shorter period than 36 years he may get longer additional periods proportionately and that when a person is in jail time does not run against him.

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(Continued from the last page)

brought beyond forty years from the starting point. Section 13 of the Indian Limitation Act provides that when the defendant is absent from British India the plaintiff can add the period of defendant's absence to the period prescribed for bringing a suit but does not provide for the rule of *Kāṭ* which allows a longer period for loss of right when a person (who may have to sue) is absent in a foreign country. Under the Civil Law of Rome the rule was '*nullum tempus occurrit regi*' (lapse of time does not bar the right of the crown). Vide *Vyakant v. Government of Bombay* 12 Bom. 11 C. R. (O. C. J.) I at p. 217 for this rule and its limitation under modern Indian Law.





the *Vishu Dh. S. VIII. 12* is that<sup>481</sup> when a person that is appointed as a witness is dead or gone abroad, those who have heard what he said may give evidence. It has already been stated, (p. 297) that a king was not to delay the examination of witnesses. *Kat.* (340-341 q. by Apararka pp. 675, 677, Sm. C. II. p. 92, V. M. p. 331) prescribes that the king (or the chief judge) should himself examine the witnesses that are present (in court) and should consider along with the *adhys* the statements made by witnesses and that, where it is doubtful who the witness on a disputed matter are, time should be given for producing the witnesses in order to ascertain the proper means of proof but that where it is clear who the witnesses may be he should make the hearing of the case proceed at once. *Kat.* (352) further prescribes<sup>482</sup> that when it is impossible to bring witnesses because they reside in a foreign country, evidence taken in writing before a man learned in the three Vedas and sent by him should be read in deciding the cause<sup>483</sup>. *Gaut.* 13. 2, *Mam* VIII. 80, *Yaj.* II. 69, *Nar.* IV. 153 and others require that ordinarily there should be at least three witnesses in a cause. *Br.* (S. B. E. 33 p. 301 v. 16) says that there may be nine, seven, five, four or three witnesses, or two only if they are learned *brahmanas*<sup>484</sup>. *Vishu Dh. S. VIII. 5* and *Br.* (S. B. E. vol. 33 p. 301 v. 16) emphasise that a single witness alone cannot be examined for deciding a matter<sup>485</sup>.

481. उद्विग्नसाक्षिणि दूते देशान्तरगते वा तदभिहितस्योक्तारं प्रमाणम् । विष्णुधर्म-  
सूत्र VIII. 12.

482. अत्रात्रय अथनो वयं विद्वेशे यतिवादिनाम् (विद्वज्भक्तिसामिनाम्) । वैविधयहितं  
त्रैलोक्यसाक्षिणं ननु क्वाद्देव । वात्स्या य. by अपराधे p. 667.

483. This corresponds to the modern rule of taking evidence on com-  
mission as provided for in Order 26 rules 4 and 5 of the Indian Civil Pro-  
cedure Code (of 1908).

484. ननु सप्त पञ्च वा न्युद्यन्तारक्षय एव वा । इमा वा क्षत्रियैः कथ्यन्ते नैकं दृष्टो  
न्यायवाक्यम् । दूतः q. by सुमुनिव. II. 76 (addis उक्तारिणि लिखितपत्रमाभिहितम्),  
परा. मा. III. 95, 96. x p. 112.

485. Vide Ben on 'Evidence' (13th ed. of 1912) p. 314. The  
Mosaic law in some cases and the Civilian and Canonists in all exacted the  
evidence of more than one witness, a doctrine adopted by most nations in  
Europe and by the ecclesiastical and some other tribunals among us. Accord-  
ing to the Common Law of England and the Indian Evidence Act (1 of 1872)  
sec. 134, no particular number of witnesses shall in any case be required for  
the proof of any fact. Best (*ibid.* p. 520) notices that in prosecutions for  
perjury the testimony of at least two witnesses is required by the Common  
Law of England (now confirmed by Statute) and that by Statute two witnesses  
at least are required in trials for treason. Vide *Emperre v. Rai Ganga-  
dhar Tylak o Ben*, L. R. 524 where the rule about two witnesses in convic-  
tions for perjury according to the Common Law of England was relied on.



But Yaj. II. 73, Viṣṇu Dh. S. VIII. 9, Nār. IV. 192 state that one man alone may be a witness in a cause if he is endowed with the regular performance of his religious duties (is possessed of the qualities stated in Viṣṇu Dh. S. VIII. 8) and is accepted as a witness by both sides. Vide Manu VIII. 77 also. Br. (S. B. E. vol. 33 p. 301 v. 18) allows a single witness to furnish valid proof if he is a *dātaka*<sup>486</sup> (messenger), an accountant, one who has accidentally witnessed the transaction or if he is the king or the chief justice. Vyāsa says<sup>487</sup> that even a single person may be enough in a cause, especially in heinous offences called *sāhasa*. If he be one whose actions are pure, who knows the *dharma* and whose truthfulness has been well attested before. Kaut. (III. 11) says that a single witness (whether a man or a woman) may be enough in cases where the transaction in question was effected in secret (except the king and one performing austerities).<sup>488</sup> Kat. (353-355 q. by V. M. pp. 319-320, Sm. C. II. 76, V. P. pp. 112-113) states that even a single person may be allowed to depose as a witness if he was taken in confidence at the time of making a deposit; so also a messenger sent by a litigant for borrowing an article (such as an ornament) or the manufacturer of an article may alone be sufficient to prove the identity of the article or when a matter has been decided by the king or chief judge, the scribe, the chief justice or any one of the *sabhyas* may alone prove the plea of *res judicata* or the point as to what was said by the plaintiff or the defendant in a suit<sup>489</sup>. Vide Br. (S. B. E. 33 p. 300 verses 13-14).

The qualifications of witnesses to be examined in a suit are stated in numerous places such as Gaut. XIII. 2, Kaut. III. 11, Manu VIII. 62-63, Vaa. 16-28, Śankha-Likhita (q. in S. V. p. 138), Yaj. II. 68, Nār. IV. 153-154, Viṣṇu Dh. S. VIII. 8, Br. (S. B. E. vol. 33 p. 302 v. 28), Kat. 347 (in Sm. C. II. p. 76 and

486. Br. (S. B. E. vol. 33 p. 300 v. 8) defines a *dātaka* as one who is a respectable man esteemed and appointed by both parties and had come near to listen to the speeches of the parties.

487. शुचिदिवश्च धर्मज्ञः साक्षी यथावृत्तपाकः । यमागमेकोपि भवेत्साहसेषु विरोधतः ॥ व्यासः in स्मृतिच. II p. 76, स्व. प्र. p. 112.

488. दृश्यमानतरेणैका स्त्री इकस्मिन्पक्षे वा साक्षी स्याद्वाक्यतावसवर्जम् । कौटिल्य 111, 11.

489. अग्नितपधिनोवाक्यं यच्छ्रुतं भूयता स्वयम् । न एव तत्र साक्षी स्याद्विस्तरादे इत्येवम् ॥ निर्णयि व्यवहारे तु युष्मद्वयो यदा भवेत् । अथवा; सम्प्रसङ्गतः साक्षी स्यात् तत्र मान्यता ॥ सुट. q. by अपराक p. 667, स्व. प्र. p. 108.

V. P. p. 111). The principal qualifications are; <sup>489a</sup> they should be born of a good family, should have lived hereditarily in the country, should be householders having a son or sons, should be well-to-do and men of character, should be trustworthy, should know dharma and act up to it, should not be covetous and should have been cited by the parties as witnesses. Some Smṛti texts such as Kaut. III. 11, Manu VIII. 68 (= Kat. 351 and Vas. 16-30), Kat. 348 provide <sup>490</sup> that ordinarily witnesses should be of the same *varṇa* or caste as the parties, that women should be witnesses in disputes between women, that men of the lowest castes (*antyajñas*) should be witnesses for litigants of those castes and that a litigant of a lower caste should not try to prove his case by citing witnesses of a higher caste or a brāhmaṇa (unless the latter is an attesting witness on a deed). But most (even including Gaut. and Manu) give an option and say that persons of all castes (even śūdras) may be witnesses for all. Vide Gaut. XIII. 3, Manu VIII. 69, Yaj. II. 69, Nār. IV. 154, Vas. 16-29 (*śarṇaṇa śarṇa eva cā*). Nār. IV. 155 and Kat. (349-50 q. by Aparārka p. 666 and V. P. pp. 111-112) provide <sup>491</sup> that in disputes between members of groups such as those who wear peculiar symbols (indicative of their sect), *śreṇis* (guilds), *pūgas* (associations), companies of traders and all others who work in groups and who are therefore called *varṇas* and in the case of slaves, bards, wrestlers, elephant riders, horse-trainers and soldiers the heads (called *varṇin*) of these groups are the proper witnesses. Gaut. XI. 21 says that in disputes among members of classes of agriculturists, traders, cowherds, money-

489a. वक्ताः स्युरनिमित्तः स्वकर्मसु दातव्यिका राज्ञो निष्पौरयनभित्ताध्याम्यतर-  
सिन्व । गौ. XIII. 3; दातव्यिकाः शुचयोऽनुमता वा जपोवराध्याः पञ्चाशमनौ वा द्वौ जन  
यनि न स्वेवेकः । कौ. III. 11; कुलजा इति सत्संपत्का पञ्चानस्यस्यिनः पुत्रिनो धर्मज्ञा  
वर्षाध्यानाः सत्यवन्तः वैविद्यद्विज्ञाः । विष्णु VIII. 8; मौलाः यतिहितः साधवर्षे विदितवन्तः  
कुलीना जज्ञा जग्मता कर्मतीर्थतः शुद्धाः पुत्रिनः सत्यवादिनः श्रोतस्मार्तकिवाहुका विगत-  
द्वेषममरा अववासिनो वृषानो होममोहनिषिद्धितास्यपरा नवमकपाका न जातु कुलतो  
यतिपण्ये । शकुलितिली in स. वि. p. 138

490. ब्राह्मणस्त्वनाह्मणवचनाद्वनवरोऽभ्योऽनिवद्वयेत् । गौ. XIII. 4; विवाह्यो  
वादिना वादकः सद्वीरेव भावयेत् । नैकद्वैधावकुदस्तु साक्षिभिर्भावेदस्तथा कात्या. q. by  
स्व. म. p. 111; मद्भारण (which reads नान्कद्वैतः वादकद्वैतः, which seems to mean  
'a litigant of a higher caste should not be proved to be what he is alleged  
to be by the evidence of witnesses of lower castes').

491. तिष्ठिनः श्रेणिद्वयाध यतिश्रोतासपापरे । समुदस्थाध वे चाप्ये वर्णास्तान-  
वधीद्वयः । दासचारणमहानी हस्तवन्ताधुधनीनिनाम् । जपेकैः समुहानी वापका यति-  
साधा । तेषां वादः स्वकर्मसु यतिगतेषु साक्षिणः । कात्या. q. by अपारका p. 666. For  
श्रेणि, पू. vide p. 280 and note 383 above and H. of Dh. vol. II. pp. 67-68.



lenders and craftsmen (such as carpenters and washermen), the help of other members of the same calling may be taken as witnesses and arbitrators.

Long lists of persons who are generally to be regarded as incompetent to be witnesses are given in Kaut. III. 11, Manu VIII. 64-67, Udyogaparva 35, 44-47, Yāj. II. 70-71, Nār. IV. 177-187, Viṣṇu Dh. S. VIII. 1-4, Br. (S. B. E. vol. 33 p. 303 vv. 29-30), Kāt. 360-364 (q. by Aparārka pp. 669-670, Sm. C. II. pp. 77-78, V. P. p. 119). Manu VIII. 118 states the general grounds why oral evidence tends to be false viz. covetousness, infatuation, fear, desire of pleasures, anger, friendship, ignorance, minority. As the list of incompetent witnesses in Nār. is the longest,<sup>492</sup> that alone is set out here: one who has monetary<sup>493</sup> interest in the parties or the subject matter of the suit (such as a co-sharer, creditor and debtor of the parties); a

492. Vide appendix for the verses of Nārada. The commentaries and digests give various interpretations of some of the words. A few such are stated in the next note.

493. The Mit. explains 'arthasambandhin' as 'vipratipadyamānārthasambandhin'; while V. P. p. 117 explains as 'creditor or debtor' of a party. 'Aptāh' is defined by Kāt. 361 (quoted by Aparārka p. 669) as 'those who depend for livelihood on the substance given by a party to the suit or those who serve him or cause benefit to him or those who are his relatives, friends or servants'. Sm. C. explains 'cārika' as a bard, while V. P. (p. 118) as oil-presser. The printed text of Nār. reads 'asrāddha' (who is not invited at a śrāddha), while V. P. and others read 'asraddha'; for vrātya (one whose upanayana has not been performed) vide H. of Dh. vol. II. p. 176. 'prag-āpādya' is explained by Anahāya as 'one who suffers from a disease which is the effect of evil actions done in past lives'. Kāt. 362 (q. by Aparārka p. 669) explains 'asābhāyāh' as sons of one's mother's sister or one's full sister or one's maternal uncle. The printed text reads 'śrāṅta', while Sm. C. II. p. 78 reads 'asānta' (restless) and V. P. 117 reads 'asrānta' (one constantly engaged in work). Kulika is explained as 'one appointed by the king to decide causes' (by Kalpataru), while the Madanaratna says 'he is the person in authority over a kula i. e. a group of brāhmanas or the like'. Vide V. P. p. 119; Sm. C. II. p. 78 and V. P. p. 118 read 'sūcaka' (one appointed by the king to find out crime among the people) for 'atāvaka' of the printed Nār.

friend (or relative such as an uncle); associate (in undertakings); enemy: one who has already been held to have given false evidence; one charged with (or addicted to) sins; a slave; one who is in the habit of finding the weak points of others (or harming others); one who has no faith in religion; a very old man (above 80 years); a minor; a woman; an oil-presser; one intoxicated; a lunatic; one who is extremely inattentive; one distressed; a gambler; a village priest; one who undertakes long journeys (on the great roads); one who is a merchant engaged in sea voyages; an ascetic (who has renounced the world); one sick; one bereft of a limb; one who is the only witness; a brāhmaṇa learned in the Veda; one who does not perform the customary religious rites; an impotent person; an actor; an atheist; a *vṛāṭya*; one who has abandoned his wife; one who has given up *agnihotra* (daily offerings into *śrauta* or *smārta* fire); one that officiates as priest for persons who are not entitled to perform vedic sacrifices; one who is an associate in eating food from the same vessel in which food is cooked (L. e. who is in commensality with a party); a former enemy (*uricitra* as one word); a spy; an agnate; a cognate (or born of the same womb); one whose evil doings in former lives are seen clearly; a public dancer (*sālīṣa*, or one who makes his women actresses); one who lives by (L. e. buys or sells) poison; a snake-catcher; one who is a poisoner, an incendiary, a mean person (*kṛāṭṭa*, or parsimonious person); the son of a śūdra woman (from one of a higher caste); one guilty of a minor sin (*upapātaka*); one fatigued; a desperado; one who has relinquished all attachments; a person who is penniless (through gambling or other extravagance); a member of the lowest (untouchable) caste; one leading a bad life; a brahmachārin who has not yet returned from his teacher's house; an idiot; an oil-seller; a seller of roots; one possessed (by a ghost or demon); one hated by the king; a weather-prophet; an astrologer; one who proclaims to the public the sins of others; one who has sold himself (for money); one who has a limb too little (e. g. having four fingers to the hand); one who lives on the immortality of his wife; one who has bad nails: one with black teeth; one who has betrayed his friend; a rogue; a seller of liquor; a juggler; an avaricious man; a ferocious man; an opponent of a *śreṇī* (guild) or *gana* (association); a butcher; a hide-worker; a cripple; one excommunicated for a grave sin (like brāhmaṇa-murder); a forger (of documents or coins or weights &c.); one who employs incantations and drugs for influencing



others; one who is an apostate<sup>494</sup> from the order of ascetics (*pratyasnata*); a robber; a servant of the king; a brāhmaṇa who sells human beings, cattle, meat, bones, honey, milk, water or clarified butter; a member of the three higher castes who engages in usury; one who has given up the peculiar duties of his caste (or station); a *kalika*; a bard; one who is the servant of a low person; one who has quarrelled with his father; one who causes dissensions. Kaut. III. 11, Manu VIII. 65, Viṣṇu Dh. S. VIII. 1 and several others say that the king cannot be cited as a witness<sup>495</sup> (except possibly to prove the plea of *res judicata* or to prove what transpired before him when a litigation was going on).

The above is a formidable list of incompetent witnesses; therefore, most Smṛtis such as Gaut. XIII. 9, Kaut. III. 11, Manu VIII. 72, Yāj. II. 72, Nār. IV. 188-189, Viṣṇu Dh. S. III. 6, Uśanas (q. in Sm. C. II. p. 79), Kāt. 365-366 (q. in Sm. C. II. p. 79) expressly point out that strict examination of the character of witnesses should be entered upon in disputes about debts and

494. In *Omichand v. Barker* (Willes 1737-1860 p. 338) where Willes (Lord Chief Justice) says (at p. 351) that in Popish times and for some little time afterwards till the Reformation was fully established there was a notion that 'even an alien friend especially if he were an infidel could not sue in a court of justice here'. That shows how non-Christians found it difficult to sue in England for their just rights a few centuries back. In the case cited above Lord Chief Justice Willes had to deliver an elaborate judgment in 1745 for holding that evidence taken in India according to the oaths administered to non-Christian witnesses could be read in a trial held in England. So one need not laugh at Nār. who flourished at least about 1200 years before that date if he held an atheist or an apostate to be an incompetent witness. It should be noted that 'By the canon Law a Jew is not admitted to give evidence against a Christian, especially if he be a clergyman,' vide Taylor on Evidence (ed. of 1848; p. 635 note C.)

495. Vide Taylor's 'Law of Evidence' (12th ed.) vol. II. p. 372 para 1381 about the sovereign giving evidence on oath; his considered opinion being (after referring to the case of *R. v. Mylius* in which the defendant was prosecuted for a libel upon king George V) 'that the sovereign if so pleased may be examined as a witness in any case, civil or criminal, but not without being sworn.' The *अथ. नि.* p. 100 says मनु न साक्षी वृषतिः कार्यं इति राज्ञः साक्षित्वनिषेधात् । तस्य कथं साक्षित्वमिति चेत्, उच्यते । श्ववहारदर्शनकालेऽन्येतेष्वर्थेषु तत्रैव साक्षित्वमुच्यते. कालान्नरापेक्षया निषेधः । तथा च व्यासः । राज्ञा धर्मोत्तमस्येव वच्युर्द तस्य निषेधः । नाथः साक्षी भवेत्तत्र सुकथा राजानमभिरम् । इति । वृहस्पतिः । निर्णीते श्ववहारे तु वृत्तार्थांश्च यदा भवेत् । अथवाः सम्प्रसंहितः साक्षी स्वाचक्ष नाप्यथा न. The *स्वतंत्र.* II. p. 80 and *वरा. मा.* III. p. 103 have the verse of वृहस्पति. न साक्षी वृषतिः कार्यः । *मनु.* VIII. 65.

the like which are of a fixed nature (of a civil nature), but that in complaints about all kinds of *ādharma* (heinous crime), in robbery, adultery or the two kinds of *pārāya* (viz. defamation and assault) there should be no (strict) inquiry into the character of witnesses (that is, all can be witnesses in such cases) and that even those like slaves and fault-finders who have been enumerated among incompetent witnesses can become witnesses in grave matters<sup>496</sup>. The idea is that in such cases the witnesses need not be strictly examined as to their possessing the good qualities ordinarily required in witnesses. But this does not authorize the examination of such persons as lunatics or idiots as witnesses, because they have not the power to understand things. *Manu* VIII. 77 emphatically states that even a single male, if he is free from greed, may be (sufficient as) a witness, but not women of good character, even though they be many, since the feminine intellect is apt to be unsteady. But even *Manu* had to concede (VIII. 70) that a woman or a minor or a very old person or a pupil, relative, slave or a hired servant may be a (competent) witness, if it is impossible to find another witness (in matters that occurred inside a house or in a forest or in crimes where life is lost). *Kāt.* 367 (q. by *Aparīkṣa* p. 671) says the same thing. *Uśanas*<sup>497</sup> (quoted in the *Sm. C. II.* p. 79, *V. P.* p. 120) provides that even a slave, a blind man, a deaf person, a leper, a woman, a minor, a very old man may be (competent) witnesses in *ādharma*, provided they are not interested in the matter of dispute (or are not related or partial to the parties). *Nār.* (IV. 190-191) gives it as his view that even when there is to be no strict inquiry into the character of witnesses in *ādharma*, still a minor, a woman, a single person, one who forges deeds (or who is a

496. कथाविषु परीक्षित साक्षिणः स्थिरकर्मसु । साहसादधिकं चैव परीक्षा कुत्रचित्समुत्ता ॥ साधतेषु दुपाज्ञायाः संमते साहमेव च । स्वेष्टादधिकं चैव परीक्षित साक्षिणः । अन्तर्देशमनि रात्रौ च बहिर्दोषमात्रं यत्नेन । एतेष्वेवामिदं विधानं परीक्षित साक्षिणः ॥ कात्या. in अपराकं p. 670-71, स्मृतिच. II. p. 79: पादद्वयसंयोजनेषु तु परिरपालसहाय-वर्जः । को. III. 11.

497. दामोदरोपि पतिरः कुडी स्त्रीवाह्यधिरादयः । एतेष्वनभिसम्बन्धाः साहमे साक्षिणो मताः ॥ उग्रनक्ष्त्रं q. by स्मृतिच. II. p. 79. साहस is of four kinds 'मनुष्यमारण्ये चौर्ये वरद्वाराभिमर्शनम्' पादद्वयसंयोजने चैव साहसं तु चतुर्विधम् ॥ q. by अपराकं p. 670 (as from मनु), परा. भा. III. p. 430 (as from दृष्ट.), स्प. प्र. p. 120. यत्र दुर्गोक्ता-वधिरपयथिनो तत्र स्त्रीणां साक्षर्यं नास्ति यत्र तु स्त्रिया सह दुःसः कार्यं स्त्रीणां चेत्तरेतरे स्वरूपं तत्र भवत्येष स्त्रियः साक्षिण्यः । न चायं नियमः स्त्रीणां स्त्रिय एव साहसं कुर्वन् दुर्गोक्तः । तेषां पुत्रविधये व्यवहारे कचित्पुत्र स्त्रीणां साक्षर्यं यतोऽविश्वरवादिभिः देतुं यत्नातः । भवति काश्चन स्त्रियो बह्व्यवादिन्य इव सत्यवादिन्यः स्थिरबुद्धयश्च । मेधा० do मनु VIII. 65.



cheat), a relative and an enemy cannot be witnesses in *sāhasa*, since a child through ignorance, a woman from her habit of untruthfulness, a forger (or cheat) because he is accustomed to doing evil deeds, a relative from affection and an enemy from the idea of taking revenge may speak falsely. There was no total disqualification of women as witnesses, since Manu quoted above allows them to be witnesses in disputes between women and in cases where it is not possible to have other witnesses. Medhātithi on Manu VIII. 68 holds that women are disqualified as witnesses only where the plaintiff and defendant are both males but that where there is a litigation between a man and a woman or between women alone, a woman may be a competent witness. Ancient Hindu Law is not singular in its partial rejection of the testimony of women. Vide Best on Evidence (13th ed. of 1922) pp. 53-56 where it is shown how ancient Roman Law and the Medieval laws of several countries of Europe more or less excluded the testimony of women, how some States in the U.S.A. excluded the testimony of negroes and persons of coloured blood. By the Canon Law more credit was given to male than female witnesses (Taylor on Evidence, ed. of 1848 p. 655, note d).

Nār. (IV. 157-172) states that incompetent witnesses fall into five classes: (1) *śūna*<sup>498</sup> like learned brāhmanas, very old men, ascetics, persons practising austerities are incompetent because ancient texts (*śruti*) say so and there is no other (special) reason for their exclusion. The Vyavahāratattva

498. असाक्षिणो हि शास्त्रेऽस्मिन् दृष्टः पञ्चविधो दुर्धर्माः । वचनादोपतो भद्रात्मकः सुविप्रतान्तरः ॥ श्रोत्रिया नानामा दृष्टा ये च पञ्चजिता नराः । असाक्षिणस्ते वचनात्प्रायः वेत्तव्यादृतः ॥ स्तेनाः साहसिकाश्चण्डाः कितवा वधकाश्च ये । असाक्षिणस्ते दुष्टत्वात्तेषु सर्वे न विद्यन्ते ॥ राजा परियुक्तीतेषु साक्षिण्यकार्यमिच्छते । वचने वच भिद्यते ते सुप्रभादसाक्षिणः ॥ अभिर्दिष्टस्तु साक्षिणस्त्वं यमेवेत्येव यो वदेत् । सुप्रभादस्तु साक्षिण्यमिच्छति ॥ योषोः आपवितायाः स्वात्तस्मिन्नस्ति स्यादिति । अत्र दृष्टस्तु साक्षिण्यमिच्छति ॥ नारद IV. 157-162; compare नारद IV. 94 'सन्तोषि न वचने दृष्टस्ते धनिनि साक्षिणः । अप्यत्र आपविताद्यस्मत्स्वपमासञ्जसुत्पन्ना ॥ संक्षेपे q. by मिता. on वा. II. 69 says 'पित्रा विवदमानमुत्कुलसाक्षिणिरिदमन्तरात्तन्मया निगम्याध्यासाक्षिणः'. This may be one of the texts to which Nār. refers in the words असाक्षिणस्ते वचनात्. The sv. p. p. 115 explains सुतान्तरः as सामान्यतो य आपयोः कश्चिद् व्यवहारसम्बन्धोऽस्ति तत्र त्वया साक्षिणा नाप्यनिरपेताऽस्मात्सुक्तं विशिष्य च व्यवहारविषयो न तस्मै आपितः आपदिता च साक्षि स दुष्टोऽपि विशिष्य विवदाज्ञानादसाक्षिणो वाक्यः'. The sv. p. p. 11. p. 81 and sv. p. p. 106 explain सुतान्तर differently; धनिनि वदेत् अनादिदिते च व्यवहारे अनादृतः सन् स्ववमेवेत्येव सुप्रभादं निदिष्टवामुपमासी धारयति अहं स्यादिति यो वचति अतो सुतान्तरामा असाक्षी । सुप्रभादं वचं वति आपिते तस्मिन्नर्थेऽसौ साक्षीत्येव आपितः वचं वति साक्षी ननपेव । स्व. p. 106.

(p. 214) points out that śrotrīyas and others cannot be appointed as witnesses, but they may be what is called *akṛta* witnesses explained below (i.e. they may if they choose appear as witnesses in a cause). They are not competent like the king, not because they are untrustworthy but because it is not advisable to call them. They were privileged persons; (2) thieves, robbers, dangerous characters, gamblers, assassins are declared to be incompetent because there is the defect (*doṣa*) of untruthfulness in them; (3) witnesses are rendered incompetent on the ground of contradiction (*bheda*), when the statement of witnesses who have been accepted by the king for determination of the same matter do not agree; (4) he who without having been appointed (by the parties to a transaction) as a witness (to it) comes of his own accord to depose is termed a *sūci* (i.e. a spy) in the *śāstras* (and so was styled *svapamuktī* by Nār. IV. 157) and is unworthy to be a witness; (5) a person is incompetent as a witness by reason of intervening death (i.e. he is *mṛtāntara*); when can any person bear testimony if the creditor (or claimant) is no longer alive, whose claim should have been heard by him specifically (but was not heard in that way)? *Mṛtāntara* is a witness whom one or other of the parties informed in a general way that there was some dealing between the parties and who was asked to be a witness (but was not told the details of the dealing) and then subsequently the party died. In such a case the person told is not a good witness, as he cannot give the details. But Nār. (IV. 94) mentions an exception to this last rule viz. when a father while on the point of death tells his sons and the like 'these are the witnesses on such and such a matter,' there even after the father's death those witnesses would be competent though death intervenes.

Witnesses are divided by Nār. IV. 149 into two sorts: (1) those appointed (*kṛta*) by the parties and (2) those not appointed (*akṛta*); the first being of five kinds and the last of six kinds. The first five (acc. to Nār. IV. 150) are a subscribing witness (*likhita*), one who has been reminded (*amārita*) i.e. one who is called as a witness without there being a document and who is present at a transaction and is again and again reminded of it by a party to it in order that the transaction may be effectively proved thereafter (Kat. 371 and 372 q. in Mit. on Yaj. II. 68), a casual witness i.e. one, who, while a transaction is being entered into, comes there by mere chance and is then asked to be a witness (*yadṛcchābhijñā* or *yadṛcchika*,



acc. to Br.), a secret witness i.e. one who is made to listen to the speech of the debtor while concealed behind a wall or screen, an indirect (*uttara*)<sup>499</sup> witness (i.e. one who learns from a witness who has seen or heard of a transaction when the latter is going to a distant country or is on the point of death). The six *akṛta* witnesses (acc. to Nār. IV. 151-152) are co-villagers (in disputes about boundaries), the chief judge, the king (before whom a suit was tried), one who is closely acquainted with the transaction of the parties (i.e. *kāryamadhyanṛta*, acc. to Br.), one who is deputed by a party (for borrowing an ornament or for settling a transaction, called *dātaka* by Br.), members of the family (*kulya*) in disputes among other members of the family (as regards partition &c.). Br. mentions twelve kinds of witnesses that are practically the same as the eleven of Nār. except one which he adds viz. *lekṣita*<sup>500</sup> (one whose name is caused to be written by a party in the presence of the witness when that party enters into some transaction in writing such as a loan with another). The only difference between 'likhita' and 'lekṣita' seems to be that the first himself writes his own name as a witness on a document while the latter's name is written as a witness by one party in the presence of the other and of the witness. Br. (S. B. E. vol. 33 p. 299 verses 4-15 q. by Aparārka pp. 666-667) defines at great length all the twelve and Kāt. also defines most of them, but these definitions are passed over as not very important. Viśvarūpa remarks that these nice distinctions among eleven kinds of witnesses are made only for the sake of exposition and for the benefit of simple people<sup>501</sup>.

499. यत्र साक्षी दिने वच्छेत्सुनृपुंशं यथाक्रमम् । अथ संजायते तं तु विद्यादुत्तर-  
साक्षिणम् ॥ बृह. in अपराकं p. 666; साक्षिणमपि यः साक्षयमुपार्जयति साक्ष्ये । अथवा-  
च्युरप्याद्यादि स साक्षयुत्तरसंज्ञितः ॥ आश्व. q. by मित्र. on वा. II. 68. Dr. Jolly's  
rendering of Kāt. in S. B. E. 33 p. 80 n. is not correct. Vide my notes  
to स्पृहहारतन्त्र pp. 66-67. The स्पृहहारतन्त्र reads 'यस्मात्तं स्पर्शे परिभाषयाम् ।  
अथः' vide the विष्णुधर्मसूत्र VIII. 12 quoted in n. 481 which refers to a  
witness that is the same as उत्तर. Compare sec. 32 of the Indian Evidence  
Act about verbal or written statements of a person who is dead or whose  
attendance cannot be procured except after unreasonable delay or expense.

500. अर्थेना च क्रियाभेदेत्यस्य कृता कणादिकम् । यदस्य लिखयते यस्तु लेखितः  
स उदाहृतः ॥ बृह. q. by स्व. n. p. 108. अपराकं p. 667 reads संवित्किं कियामेदेः  
कार्यं कृतम्.

501. यत्तु नारदेकादशविधं सारं कृतकृत्यभेदेनोक्तं तत्तौह्वानमुपयोजनमुपपन्न-  
म् । विष्णुधर्म. on वा. II. 71.

Before a witness for a party begins to depose, it is the duty of the opposite party to point out the ground or grounds, if any, of the incompetence of the witness put forward for examination. Kāt. adds<sup>302</sup> that the latent defects of the witnesses of a party must be pointed out by the opposite party, but the patent defects will be considered by the members of the court at the time of giving their decision. Vyāsa<sup>303</sup> states 'the defects of the witnesses of a party should be pointed out by the opponent in open court by putting them down in writing and the witnesses should be called upon (by the judge) to refute them; if the witnesses admit (the faults pointed out) they do not deserve to be witnesses; if otherwise (if the faults are not admitted) they should be established by the opponent with evidence (other than those of other witnesses); for if the defects of the witnesses of a party were allowed to be established by other witnesses to be cited by the opponent, there would result the fault of a never-ending series (*anavasthā*), since the first party would then try to show defects in the latter set of witnesses and this may have to be carried on *ad infinitum*.' Br. laid down that an opponent should not be allowed to point out the grounds of incompetency in witnesses after they have begun to depose and Kāt. adds<sup>304</sup> that he (that party), who points out, after the witnesses have deposed to a matter, faults in them in whom he found none at first and who can not set out a proper reason (for his not proclaiming the faults at first) should be fined in

302. दणमस्य हि ये दोषा नक्तव्यस्ते विवादितः । गृहान् प्रकटाः सग्यैः काले शास्त्र-  
दर्शनात् ॥ कात्या. q. by अपराज् p. 671. स्मृतिच. II. p. 83 which adds काले निर्णय-  
काले. The स्व. म. p. 39 says 'गृहाः शास्त्रदर्शनेन साक्षिपादान्पूर्वकाले नक्तव्याः'.

303. साक्षिदोषाः यथोक्तव्याः संसदि प्रतिवादितः । पक्षेऽभिलेख्य तावत् सर्वान् वाच्यः ।  
प्रत्युचरे तु ते ॥ प्रतिपक्षी न साक्षिगमनं हि तु कदाचन । अतोऽप्यथा वाचनीयाः क्षिपया  
प्रतिवादितः ॥ अप्येवमु साक्षिभिः साक्ष्ये दूषणे पूर्वसाक्षिणाम् । अनवस्था भवेदोपलोचन-  
व्यवस्थया ॥ व्यास q. by स्मृतिच. II. p. 83. स्व. म. p. 38 (first two). The  
first two are ascribed to काल्या. by परा. मा. III. p. 106 and स्व. नि. pp  
112-113. The *mita* on वा. II. 73 has the following lucid note 'प्रतिवादितान्  
साक्षिदूषणे दूषे मातृशयोऽप्युच्येत् काल्यादिषु तथैव निर्णयः । अप्येवमु तु तद्वचनान्तो-  
क्तस्य निर्णयो न साक्ष्यतरेणेति जानवस्था । यदि साक्षिदोषहृदयस्य साक्षिपितु न शक्नोति  
प्रतिवादी तदासौ साराजुसारेण दण्ड्यः । अथ साक्षयति तदा न साक्षिणः ॥ Compare  
sections 148 and 153 of the Indian Evidence Act about cross examination  
to shake the credit of a witness.

304. लेख्यदोषान्त्वे केचित्साक्षिना चैव ये स्मृताः । वाक्काले तु नक्तव्याः पश्चाद्-  
शास्त्र दूषणत् ॥ उक्तैर्षे साक्षिणो वस्तु दूषयेत्यामृतिनाम् । न च नक्तव्ये सुचारुवाच्यतात्तु दूषे-  
मात्रमम् । कात्या. in स्मृतिच. p. 83. म. वि. pp. 143-144. The first is ascribed  
to बृहस्पति by अपराज् p. 672.





should face the east or north, are to be examined in the presence of the images of gods and brāhmaṇas in the first half of the day and should be exhorted to tell the truth by being bound with oaths. This examination in the public and after an oath went a long way in checking the tendency to depose falsely. The oath consisted of two parts, viz. (1) the requirement to tell the truth and (2) the exhortatory and imprecatory part. Both were administered by the presiding judge. Gaut. (XIII. 12-13) appears to prescribe that an oath (*śapatha*) was not to be administered to brāhmaṇa witness, but Manu VIII. 113 (= Nār. IV. 199) does not make this distinction. Gaut. (XIII. 14-23), Manu VIII. 81-85, 89-101, Viṣṇu Dh. S. VIII. 24-37, Nār. IV. 201-228 contain very long exhortations addressed by the judge to the witnesses relating to the importance and high worth of truth, stating how the conscience of a man pricks him, what rewards await the truthful witness here and in the next world and what sin and terrible torments in Hell are the lot of an untruthful witness, what evil befalls even the deceased ancestors of an untruthful witness and how he is liable to be punished by the king. They are too long to be cited here<sup>309</sup>. Shorter exhortations are found in Yāj. II. 73-75, Vas. 16. 32-34, Baud. Dh. S. I. 10. 19. 9-12 (S. B. E. vol. XIV p. 203), Br. (S. B. E. vol. 33 p. 301 verses 19-22), Kāt. 343. Nār. IV. 200 provides 'let him (the judge) inspire them (the witnesses) with awe by (quoting) ancient texts, extolling the greatness of truth and denouncing falsehood'. Kaut. (III. 11), Manu VIII. 88 and 113 (= Nār. IV. 199), Viṣṇu Dh. S. VIII. 20-23 add further modes of speech and exhortations according to the *varṇa* of the witness: A brāhmaṇa witness is to be addressed by the judge as 'speak' and to be exhorted to swear by his veracity, a kṣatriya one was to be addressed as 'speak the truth' and to be sworn by the animal he rides and his weapons (which he is to touch), a vaiśya is to be sworn by his kine, grain and gold and a śūdra is to be sworn by (imprecating on his head) all grave sins. Manu VIII. 88 provides that a brāhmaṇa should be asked to depose

309. Vide Appendix for Nārada's verses.

310. The exhortation in the अथवाच (III. 11) is somewhat different from Manu's 'तत्र ब्राह्मणे ब्रूयात्सर्वं वृत्तीति राजस्य वैश्वं वा मा तवेहापूर्वकलं, कपाल-हस्तः शत्रुघ्नं भिलषीं मयहेरिति पूर्वं जन्ममरणान्तरे वदः पुण्यकलं तत्राजानं मयैव, राजस्य कित्तिवर्गं पुण्यमनन्दधातवे । पुण्यधामपुण्यः पञ्चादृति ज्ञापेत् यथापुण्यधाम । एक-मन्त्रः सत्यमवहरतेति ।'. The text in Dr. Sham Shastri's edition is rather corrupt and not properly arranged.



with the word 'speak', while VIII. 113 states that a brāhmana is to be made to swear by his truth. Some explain that the first rule applies to excellent brāhmanas and the second to inferior ones and rely on Gaut. (XIII. 12-13) who prescribes that an oath to speak the truth is not to be administered to brāhmanas but only to others. Vide Haradatta on Gaut. and Vivādacandra p. 127. Manu VIII. 102 (= Band. Dh. S. I. 5: 95) is careful to point out that the exhortation is not to depend purely on the caste but that brāhmanas (and others) who tend kine, who engage in trade, who are craftsmen or actors, who are menial servants and usurers should be treated (by the judge) as śūdras<sup>511</sup> (in the matter of taking oaths). Witnesses after they are assembled before the Court are to be ordinarily examined separately (vide Kāt. quoted in n. 508 above). But Gaut. XIII. 5 and Kāt. 394 provide<sup>512</sup> that if a certain matter is seen by the witnesses as a body then they may be examined together. Manu VIII. 78 and Kāt. 392 prescribe that what the witnesses declare quite naturally (without hesitation and fear) should be taken down and that when the witnesses have declared (what they know) they should not be questioned again and again by the king (or judge). From the Smṛtis and the 9th Act of the Mrochakaṭika it appears that

511. The Mit. on Yāj. II. 73 explains Manu VIII. 113 as follows: a brāhmana witness is to be sworn by being told that if he spoke untruth his truth will perish, a kṣatriya that his vehicle and arms will be fruitless, a vaiśya that his cattle, grain and gold will be lost and a śūdra that all sins will be his lot. Others explain differently. The Vyavahāratantra p. 215 says 'गोबीजकाञ्चनादहो यत्प्राप्तं वस्त्रवाहुताभिधाने स्यादिति वैधम्'. The दीपकलिका on Yāj. II. 74 says the same. Medhātithi on Manu VIII. 113 appears to hold that the exhortatory part is repeated by the witness एषमेव कुर्वामि विद्वन्निष्ठमाप्तमिति अकीर्तनक्रिया इत्यर्थः । तत्र यः शप्यते स एव चाप्यने सत्येन शपे सत्यवतिष्ठन्नप्यनोप धर्मो वा मे निष्फलः स्यादिति । ... गोबीजकाञ्चनानि वैद्यो हस्तेन स्पर्शयित्वाभिप्रेदेतानि वा मे भिक्तलानीति पूर्वम् ।'. The Madanavratna says that brāhmanas following such avocations as rearing cattle should be made to take an oath like śūdras, गोरक्षयादिभिरपकुटा नाष्टपास्तु शुद्धवस्त्रधर्य कार्दमश्च ये शपेताः स्वधर्मस्य परपितृशोकादिभिः । द्विजत्वभिकाङ्क्षन्ति तेषां शुद्धवस्त्राच्चेत् ॥ Vas. III. 1 and Manu II. 168 provide that brāhmanas who have not studied the Veda, who do not expound it or do not keep the sacred fires become equal to śūdras. The Indian Oaths Act (X of 1873) sec. 6 allows a witness who has an objection to taking an oath to make an affirmation.

512. समवेतैस्तु यद् दृष्टं वक्तव्यं तत्रापि तु । विभिन्नैकैककार्यं यद्वक्तव्यं तदुच्यते प्रथम् ॥ कार्या. q. in अपराक्ष p. 675. Vide एव. य. p. 126 for two different readings and interpretations of Mō. XIII. 5. स्वभाषोक्तं वचनैर्वा साक्षं यदोपयोजितम् । यत्के तु वाक्येनो राज्ञा न प्रष्टव्यः पुनः पुनः ॥ कार्या. q. in अपराक्ष p. 675. मिता. on Yāj. II. 79 (without name).

it was the chief judge or the judges who put questions and that there was no elaborate cross-examination and re-examination of witnesses as in England (which practice is followed in modern India). The only cross examination that appears to have been allowed was about the faults or grounds that made a person an incompetent witness. In this respect ancient Indian practice resembled modern judicial practice in some European<sup>513</sup> countries other than England. Witnesses were compelled to attend. Kaut. III. 11 states that witnesses who are not far removed by time or space should be produced by the parties themselves, but those who are far away or who are unwilling to stir shall be got summoned by order of the king<sup>514</sup>. Manu VIII. 107, Yaj. II. 77, Br., Kāt. and Vāṇu Dh. S. VIII. 37 say that if a witness knowing all facts and not prevented from coming by disease or similar causes refuses to come as a witness he incurs the sin of false witness, has to pay the amount in dispute and ten per cent thereof as fine to the king. This is in accordance with the principle enforced in modern times that it is the duty of a citizen to appear before a court of justice when summoned. Kaut. (III. 1) provides for subsistence allowance to witnesses. It is not quite clear whether parties could be regarded under ancient Hindu Law as competent witnesses on their own behalf. Yaj. (II. 13-15) appears to suggest that parties could be regarded as witnesses in their own cause and held to be false from their demeanour as in the case of witnesses. Kaut. IV.<sup>515</sup> 8 and the 9th Act of the Mṛcchakaṭika show that the accused was questioned by the Court as to his movements about the time of the alleged offence and till his arrest. Śakra<sup>516</sup>

513. Vide Stephens' 'History of the Criminal Law of England' (1853), vol. I. chap. XII, where on p. 431 he remarks 'cross examination is a highly characteristic part of an English trial, whether civil or criminal, and hardly any of the contrasts between the English and continental systems strikes an English lawyer so forcibly as its absence in the continental system.'

514. देशकण्ठाविद्वत्स्थान् साक्षिणः प्रतिपादयेत् । दूरस्थानवसाराणां स्वामिनाकवेन आचरेत् ॥ कौ. III. 11 last verse; आहूतो परन्तु नाप्यखेरसाक्षी रोगविचलितः । कले दमं च दाप्यः स्वाग्निपलायनेन सः ॥ बृह. 9. by स्मृतिच. II p. 91, परा. ना. III p. 113; compare Order 16 rules 10-15 (of the Indian Civil Procedure Code) about the compellability of witnesses and the remedies against such as disobey a summons.

515. ततः पूर्वस्थाङ्कः पचारं राजो निगमं चावधत्तादिति अनुबुध्यते । कौ-टिल्य IV. 8.

516. स्तेनः कार्यविज्ञानी वा स साक्षी जनकथा । दण्डार्थं बुद्धार्थं दण्डवेराहृतो विद्या ॥ शुक्र. IV. 5, 184.



IV. 5: 184 defines *sakṣi* in such a way as to exclude the litigant himself. Ordinarily witnesses were examined in the open court in the presence of the parties and never behind their back, but Kā. (387-389) prescribes that in the case of immovable property oral evidence may be taken on the property itself and in some cases even elsewhere than these two (viz. the Court and immovable property), that is, in the case of the death of living beings witnesses may be made to depose before the corpse (of the animal killed) or, in the absence of the body, before<sup>517</sup> some mark (such as the horn of an animal). Br. and Manu VIII. 25 state that the truth of the statements of witnesses should be examined by marking their tone, their change of colour, their eyes, their gestures, and their demeanour<sup>518</sup>. Texts like Sankha-līkhitā (q. by V. P. p. 124), Nār. IV. 193-196, Visṇu Dh. 8, VIII. 18, Yaj. II. 13-15 and Kā. 586 point out the actions and appearances of a party or witness that deposes falsely, viz. he appears restless, changes his place (i.e. moves from one spot to another), licks the corners of his lips, his forehead perspires, his face loses colour, he frequently coughs and heaves frequent sighs, he scratches the ground with his feet (toes), waves his hands and garment, his mouth becomes dry and his voice falters, he speaks incoherently, talks too much though not asked and does not reply straight to the questions asked and avoids meeting the eyes of the questioner. Such a witness may be looked upon as untrue and the king or judge should bring him under discipline (so that he will be afraid to lie). Merely on seeing these signs a witness was not to be punished or entirely disbelieved, since these signs raise only a probability of untruthfulness (as remarked by Mit. on Yaj. II. 15 and V. P. p. 124).

517. *सभातःस्थेन वक्तारं सार्वं नाम्नः साक्षिभिः । सर्वसाक्षेभ्यश्च धर्मो ज्ञापय स्वात्मनु । अभैर्योषति वक्तारं त्वोरपि विना कश्चित् । चतुष्टयेन च धर्मो विप्रदर्शयते च । यः चित्ताजिनो सार्वं कक्षेव निवसति । तदभावे तु चित्तरथ नाम्नीव प्रसादयेत् ।* कान्वा. q. by सूत्रिच. II. p. 89, पञ्च. नं. III. pp. 112-113, स्व. म. p. 41, स्व. य. p. 122. The reading *ज्ञापयन्ती* for *सिवा* is better, स्व. य. p. 124 quotes a long prose passage from शङ्खलिकृत about the demeanour of witnesses. The *mita* on Br. II. 15 remarks: 'एतच्च दोषसम्भावनामात्रमुच्यते न दोषनिश्चयाय । आभासिकनिमित्तकविकारयोर्विकारव दुर्ज्ञेयमात्रः ।'

518. *उपांशता परीक्षाः साः स्वरर्षाङ्गुलिदिभिः । एत. q. by सूत्रिच. II. p. 85, स्व. य. p. 124. On कृत्वाक्षी स विज्ञेयस्तं पारं विमयेद् दृश्यम् (नार. IV. 196), स्व. य. remarks विमयेद् शिक्षयेद्यथा कोटसम्पाद् विमेलीर्यते ।... साङ्ख्यिक-वैचारिक-विकार-विवेकस्य दृशकस्यात् सभावनामप्येव च दृश्यनस्यान्यारूपत्वादिति बुद्धम् । (p. 124), Vide also *mita* on Br. II. 15 cited above.*

When there are many witnesses but they differ in their statements certain rules are laid down by Manu VIII 73 (= Viṣṇu Dh. S. VIII. 39), Yāj. II 78, Nār. IV. 329, Br. (S. B. E. vol. 33 p. 303 v. 35), Kāt. (408). They are briefly these:<sup>319</sup> The statement of the majority of witnesses should be accepted, but if they are equally divided then the statement of those who are more pure (in character or more disinterested) should be accepted and if the meritorious are divided equally then those who are the best among them should be accepted as true. The Mit. on Yāj. II 78 adds that if there is a conflict of testimony between the statements of a few but eminently qualified witnesses on the one hand and those of a larger number of ordinary witnesses, then the former should be accepted as Yāj. II. 72 requires. I. a. It prefers quality to more numbers. Kauṣ. III. 11 prescribes that when there is conflict in the oral evidence the decision should be according to the evidence of the majority of witnesses or of those who are pure in character or of those who are approved of by both sides as good witnesses or a mean should be drawn from their statements. Nār. IV. 160 and Kāt. 359 state<sup>320</sup> that if one out of the (three) witnesses attesting a document or out of (three) witnesses that are cited by a party deposes in a way contradictory to what is deposed to by the other two, then all the three become incompetent witnesses on account of contradiction. This has been interpreted by the Vyavahāra-mātrkā (p. 326) to mean that where all witnesses are of equal status and there is a majority of only one favouring one side, then all the witnesses are incompetent and oral evidence is in that case futile for decision.

The important question is how much has to be proved by the party calling witnesses. Yāj. II. 79 (= Viṣṇu Dh. S. VIII. 38), Nār. II. 27 and Br. (q. by Sm. C. II. 91) state the general rule that that party whose averments are supported in their entirety as true by the witnesses becomes successful, while that litigant

319. साक्षिद्वये वधूतस्ते प्राज्ञाः साम्ये दुष्मान्विताः सुनिर्द्वये किमनुकारतस्तस्ये  
सुविचरतः ॥ दृढ. q. by अ. मा. p. 325, परा. मा. III. p. 116. The Mitra. on Yāj.  
II. 78 explains 'यदा दूनसुनिर्द्वयं विचरति तदा यः सुमन्वितः सुतावद्वन्तद्वयोऽनुकार-  
तस्तस्ये सुविचरतः ॥ यदा तु सुनिर्द्वयं विचरति तदा यः सुमन्वितः सुतावद्वन्तद्वयोऽनुकार-  
तस्तस्ये सुविचरतः ॥ यदा तु सुनिर्द्वयं विचरति तदा यः सुमन्वितः सुतावद्वन्तद्वयोऽनुकार-  
तस्तस्ये सुविचरतः ॥'

320. साक्षिणां निमित्तान्ते तु निर्दिष्टानां च यादिना । तेषामेकोऽप्यपरादीं येदात्मने  
न साक्षिणः ॥ कात्या. q. by अ. मा. p. 325, परा. मा. III. p. 116.



whose claim is declared by them to be false certainly loses<sup>521</sup>. Nār. IV. 232 and 234, Kāt. 396, 398 lay down<sup>522</sup> the rule that in civil disputes that are of a non-urgent nature (like recovery of debts), if witnesses depose to more or less (than what is averred in the plaint), then the claim is not established in its entirety; where the witnesses depose to more or less (than the claim affirmed by the party) the deposition of the witnesses should be considered as not taken down or it should be omitted (from consideration)<sup>523</sup>; the witnesses in such a case are not liable to fine; they may deserve to be fined if they do not depose (to what they know). Similarly Nār. IV. 233 and Kāt. 399 say that where the depositions of witnesses are in conflict as to the place, the time, the property, the amount, the colour, the species (or caste), the form (or shape), the age (as stated in the pleading of a party), the depositions are to be regarded as good as not given at all. The rule amounts to this that any discrepancy between the essential details or particulars of a claim

521. यदाशेषमतिज्ञार्थं साक्षिभिः प्रतिपद्यितः । स जघ्नी स्यादनुषथा तु साधारणं न समाप्नुयात् ॥ बृह. q. by अपराकं p. 678, स्मृतिच. II. p. 91, परा मा. III. 114.

522. अनादिदु विनादेदु रिधरादेदु मिधिरम् । ऊने वाप्यपिके वार्धे मोले सार्धं न निश्चयति । ऊगापिके तु यत्र स्यात् तत्सम्यक् तत्र वर्जयेत् । साक्षी तत्र न दृष्टव्यः स्यादनुषत्तं दृष्टव्यमस्ति ॥ जाय. 396, 398 q. by स्व. न. p. 312 and 313, अपराकं p. 678, स्मृतिच. II. p. 90, भाव. नि. p. 68.

523. The maxim (In Yāj. II. 20) that on proof a part of a claim the whole may be held to be proved (vide above n 431) applies only where the opponent totally denies every item of the claim of the plaintiff. This is a presumption and the king or judge is not to be blamed for acting upon it in case of total denial, as said by Gant. XI. 23 and 32. 'यदाप्यपिमे तर्कोऽनुवादः । ... तस्माद्वारान्धार्यानिन्द्यो' This text of Yāj. is apparently in conflict with Kāt. 473 (q. by Mit. on Yāj. II. 20) 'in claims containing several items, the creditor (or plaintiff) secures a decree for as much out of them as he is able to establish by means of witnesses'. These two verses are sought to be reconciled in various ways by the Mṛt. (on Yāj. II. 20), the Sm. C. II. pp. 120-121, Vyavahāra-māyikā pp. 310-312 (where it criticizes the views of Yogīśa), V. P., pp. 98-102. It is impossible for want of space to go into these interpretations. The Mit. says that Kāt. 473 applies to a case where the son or the like being ignorant of the debt contracted by his father or the like says 'I do not know' i. e. pleads ignorance. In that case he does not deny (he is not *nīkṣaya-vādin* but only *ajñānin*). The Vyavahāra-nirṇaya p. 68 explains Kāt. 473 in the same way and about 396 it adds that when he cites witnesses as supporting his entire claim and the witnesses depose only to a part of it or to more than he avers then his claim falls in its entirety but in *vāhara*, theft and adultery it is otherwise.

524. देसं जाते धने संख्यां क्वं जायाकृती वयः । विसेवदेवम सत्ये वसुधकं निदुःखं ॥ जाय. in अपराकं p. 678 (reads दिनं for धने), स्मृतिच. II. p. 90.

made in the plaint (such as the time, place, number &c.) and the case made out in the depositions as to any of these essential particulars will have the same consequence as tendering no oral evidence. This rule was not followed to the letter and besides other means of proof could be resorted to, as stated by the Mit., the Vivādacandra and others<sup>525</sup>. Kaut. III. 11<sup>526</sup> states that when the witnesses depose to less than what is averred in the plaint, the plaintiff has to pay a fine (of a fifth part) on the excess and when they depose to more than the claim, the excess (held proved on the depositions) may be taken by the king.

In charges of adultery, heinous crimes (*sāhasa*) and theft the whole of the matter that is alleged may be held proved, when witnesses depose to only a part of the matter<sup>527</sup> (says Kāt. 397).

Nārada IV. 165 prescribes that a litigant<sup>528</sup> should not secretly approach a witness cited by his opponent, nor should he try to win him over (by bribes or threats) through another; if he does so, he would suffer the consequences of a losing party (*hīna*).

There were rules about the late production of evidence. It has been already shown how if a litigant adduces weak evidence, though strong evidence is available, he would not be allowed to rely on the latter after judgment is pronounced. It is said by Nār. I. 62 that when a law-suit has proceeded far enough (lit. has been cleansed or thrashed out), evidence such as a

525. यत्र तु प्रतिज्ञातार्थस्य विस्मरणोद्दिना भगवानासौ साक्षिणो न प्रतिपादयन्ति तत्र प्रमाणान्तरेण निर्णयः कार्यः । मिता. ०० वा. II. 79; एवावता मन्वेहे वृष्णीभावे वा न जानामि इति वाचने वा किञ्चिदभिधाने वा यावत्पर्यं संशयस्तत्र क्रियाम्भरेण निर्णय इत्युच्यते । अकृतानिरोधयिकाभिधाने जय एव । अकृतविरोधयिकाभिधाने अङ्ग एवेति । विवादचन्द्र pp. 131-132.

526. साक्षिणश्चेदभिधेयापाहूनं ह्युरतिरिक्तस्याभियोक्ता वचनं दद्यात् । अतिरिक्तं वा ह्युत्सदतिरिक्तं राजा हरेत् । अर्धशतक III. 11.

527. साक्ष्यार्थोपि यद्विधे साक्षिभिः सकृदप्येव । सीमन्ते साहसे चौर्ये दाम्भायं परिकल्पितम् । कात्या. १. ८५ मिता. ०० वा. II. 20, अथर्कं p. 678, स्तुतिच. II, p. 90.

528. The fact that a party requested a witness to give false evidence is, admissible evidence against such a party, it being an admission by conduct that the party has a bad case. Vide Cockburn C. J. in *Mortarty v. London Chatham and Dover Ry. Co.* L. R. 5 Q. B. p. 314 at p. 319 'if you can show that a plaintiff has been suborning false testimony and has endeavoured to have recourse to perjury, it is strong evidence that he knew perfectly well his cause was an unrighteous one'. Vide illustration 4 to section 8 of the Indian Evidence Act.



document or witnesses, would then become useless, if that evidence had not been announced before<sup>529</sup>. After a reply is filed by the defendant, the plaintiff has to give a list of his evidence i. e. documents or witnesses (Yaj II. 7). The meaning briefly is as follows: If he does not do so, proceeds with the trial and does not call all necessary witnesses or produce all documents and the case is almost finished, but judgment is not pronounced, even then he would not be allowed to produce fresh evidence at that late stage. For if fresh evidence not previously disclosed were allowed to be given at that late stage, it would cause surprise to the defendant, who would then demand time for adducing evidence in rebuttal and then the plaintiff may again cite further evidence and this process is in danger of being carried on *ad infinitum*. If however witnesses were already cited but all were not examined (e. g. if ten witnesses were mentioned and only three examined) and the plaintiff found that the evidence of the few witnesses examined for him is contradictory or hostile, then he may be allowed to produce even at a late stage the remaining witnesses (who may be seven i. e. double the number of those already examined or who may be more respectable or purer in character). This proposition is contained in Yaj II. 80 on which the *Mitākṣarā* remarks that even if witnesses are not mentioned in a list, but before judgment is pronounced other more reliable or respectable witnesses or double in number (and of the same status as) of those examined are available, they should be examined by the court even at a late stage. The rule is that as long as witnesses are available resort to ordeals should not be had. Yaj. II. 80 also has given rise to various interpretations. Vide *Mit.* and *Aparārka* on Yaj. II. 80, *Sm. C.* II. p. 94, *V. P.* p. 130-134. The *Mit.* thinks that the verse applies where the plaintiff or the party on whom lies the burden of proving a positive proposition finds that the witnesses produced by him are hostile or contradictory and that in such a case he may be allowed to cite other more respectable or more numerous witnesses to prove his proposition and to show that the first set of witnesses is false, while *Aparārka* holds that the verse says that when the party who has to prove his

529. निमित्तकथनकारेण प्रमाणमग्रतः भवेत् । लिखितं साक्षिणो वापि पूर्वमावेदितं न चेत् । नारदः I. 62. निमित्तक does not mean निमित्त, but शोधितः (आच. न. p. 8 says) lit. washed out, cleansed (carried far). For detailed explanation of this verse vide my notes to *च. न.* pp. 78-80. The *Madanaratna* introduces *Nār.* I. 62 with the words, 'अथ च विचरितसादृश्यमासौ व्यवहारमगतेः दानुवहः'.

case cites witnesses which the opponent feels are false, the opponent may produce more respectable or more numerous witnesses to depose to the contrary and he would thus prove the first set to be false. Aparārka relies on Kat. (408) for this proposition<sup>330</sup>. It may be said that Aparārka's interpretation appears more natural. V. P. (p. 134) accepts Katyāyana, but says that the interpretation of the MIL. (of Yāj. II. 80) is correct. Whatever view is accepted it leads to this that one set of witnesses not only may prove the truth of a party's case but also establish that another set of that party's witnesses are guilty of perjury.

Yāj. II. 82 provides that if a witness, having promised with other witnesses to depose to a state of things, denies at the time of his examination that he saw the matter in dispute, he should be fined eight times the amount that a defeated litigant would have to pay and a brāhmana witness similarly guilty if unable to pay may be banished (or his house should be razed to the ground). Nar. IV. 197 says that such a person is worse than a false witness. Manu VIII. 107, Yāj. II. 76, and Kat. (405) prescribe that if a person who has witnessed a transaction does not depose (i. e. remains silent) about it, though not suffering from disease or some other calamity, he should be made (after waiting for three fortnights) to pay the amount of the debt or other matter in dispute and also one-tenth thereof as fine to the king.

After the witnesses have deposed the chief justice and *sabhyas* have to consider the depositions of witnesses (as Kat. 340 provides)<sup>331</sup>. The Court has to find out which set of witnesses are to be believed and what witnesses are perjured. Perjury entailed, according to dharmaśāstra works, both secular and other-worldly consequences. Āp. Dh. S. (II. 11. 29. 8-9) states: 'When a witness deposes falsely the king should fine him and, in addition, the witness incurs hell after death' and Gaut. provides (XIII. 7 and 23), 'a witness telling the truth goes to heaven, but falls into hell if he does the reverse and when he deposes falsely he is to be censured and fined'. Manu VIII. 118 states that witnesses depose falsely through covetousness,

330. वयं नैवास्मिन्कार्ये साक्षिभिर्वादिना भवेत् । प्रतिवादी वदा तव नास्तेकार्यं सम्पदा । बाहुभिश्च कुर्वन्निर्वा इवोऽपि । कृतसाक्षिणः । कात्या. 408 q. by अपरार्क p. 679, १५, मा. p. 333, स्मृतिच. II. 94, १५, न. p. 134.

331. साक्षिभिर्वास्मिन्कार्यं सम्पदेऽपि परीक्षयेत् । कात्या. 340 q. by सिद्ध. on चत. II. 30, अपरार्क p. 675, १५-मा. p. 331.



wrong ideas, fear, friendship, sexual passion, wrath, ignorance and minority and prescribes (VIII. 120-122) varying fines for perjury arising from these several causes. Br. (S. B. E. vol. 33 p. 301 v. 21) regards<sup>332</sup> a corrupt judge, a perjured witness and the murderer of a brāhmana as equally sinful. Yāj. II. 81 and Kāt. (407) prescribe<sup>333</sup> that the litigant who procures perjured evidence and the witnesses guilty of perjury should each be separately fined double the amount of the fine prescribed for defeat in various disputes and a brāhmana (guilty of doing the same) should be banished from the country<sup>334</sup> (but not fined). But when a person (of any of the three castes other than brāhmana) is frequently guilty of perjury he should be fined and given physical punishment (as cutting the tongue or death) and a similarly guilty brāhmana should be fined and banished (or degraded by being carried naked through the streets or deprived of his house). The Mit. on Yāj. II. 81 says that when Manu prescribes (VIII. 380) that a brāhmana guilty of a sin is not to be awarded death or corporal punishment and that he is to be banished with all his wealth, he refers to the brāhmana being a first offender and not a confirmed one. Manu VIII. 108 says 'where within seven days from deposing in a cause a (serious or painful) disease or fire or the death of a relative befalls a witness, he should be (being held as a false witness owing to these portentous happenings) made to pay the debt in dispute to the opposite side and a fine to the king.' The Sm. C. (II. p. 94) explains that this applies to a witness who is the only one on a disputed matter such as a messenger and the king or judge should wait for seven days to see whether any of these calamities befalls that witness and then hold him to be perjured. Kāt. (410) contains<sup>335</sup> a similar rule, but he states that the king should wait one, two or three weeks or up to 45 days according to the value of the matter in dispute and the caste of the deponent. Manu VIII. 117 (= Visnu Dh. S. VIII. 40) prescribes that in

332. कूटस्थः कूटसाक्षी बह्वदा च समाः स्मृताः । बृह. १. १४. २. p. 135.

333. येन कार्यस्य लोभेन मिद्विद्याः कूटसाक्षिणः । एहीत्या वर्य सर्वस्य दुर्वाचिर्वि-  
वर्ध सतः ॥ कात्या. 407 १. by अपराधो p. 672. स्मृतिसं. II. p. 93.

334. The *Mitā* explains विवाहन in वा. II. 82 as follows 'विवाहनं च  
नग्निकारणमुद्वेगमुद्वेगमिवात्मनस्तत्त्वं विवचनानुसारेण दृश्यम् । इत्येवो एवमुद्वेगमुद्वेग-  
दानात्मनश्च स्वजातुचितकर्मकरणमिदमुद्वेगमकारावृत्तयेनादि दृश्यम् ।' Vide *Mitā*-  
on वा. II. 81 for three meanings of विवाहदेत्.

335. सताह्वानु मसीचेत वच सात्वचुर्दे वदेत् । रोषोऽग्निर्ज्ञातिमरणं हिसताह्विषस्य  
वा । बद्धचरवारिके वापि दृश्यजात्यादिभेदतः ॥ कात्या. 410 १. by स. वि. p. 149.

whatever lawsuit it is established that witnesses perjured themselves, the judge should hear it again (from the beginning) or if the suit has ended he should set aside the decision and examine it again.

Gaut. 13. 24-25, Vas. 16. 36, Manu VIII. 104, Yaj. II. 83, Viṣṇu Dh. S. VIII. 15 prescribe that a witness may depose falsely in a cause when, if he were to speak the truth, a person of the four varnas is liable to suffer the sentence of death. Manu VIII. 105-106, Yaj. II. 83, Viṣṇu Dh. S. VIII. 16 prescribe that as a penance for the falsehood a witness of the three higher castes may offer three oblations of boiled rice to the goddess of speech (Sarasvatī) or he may offer into fire clarified butter with the mantras called Kūṣmāṇḍa (Vaj. S. XX. 14-16 or Tal. Ā. X. 3-5), or with the three verses beginning with 'yaddevā devahotanam' or with the verses sacred to Varuṇa (viz. Rg. I. 24. 15, 'aduitamam varuṇa') or with three verses of which waters are the deity (Rg. X. 9. 1-3 'apohi śtha'). Viṣṇu Dh. S. VIII. 17 adds that a śūdra guilty of perjury in the above case may by way of expiation feed ten cows for one day. It is strange that the dharmasāstra works should permit perjury to save a culprit from being sentenced to death. Probably popular sentiment of old standing allowing the speaking of falsehood in certain cases was responsible for this. In the Mahābhārata frequent reference is made to the permission to speak untruth in ordinary life when one's own life or another's life is in imminent danger. Vide Śānti<sup>536</sup> 45. 35, 109. 19. It is stated in Śānti 165. 30 that speaking falsely is not a sin in five cases viz. in jest, to woman, at the time of (i. e. in bringing about) a marriage, for the preservation of great wealth and for one's life. Vas. 16. 36 mentions these five occasions somewhat differently. Vide Manu VIII. 112 also for a similar rule. But so old a sage as Gaut. (23. 29) implies that he disapproves of this sentiment<sup>537</sup>, when he states, 'according to some falsehood entails no fault (i. e. no expiation need be performed) in (bringing about or breaking promises made at)

536. वाक्यतोऽप्युक्तं वाच्यमात्मनो वा परस्य च । कुर्वन् खलु चैव दण्डाद्विवाहकालेषु च ॥ शान्ति 34. 25; न जन्मयुक्तमनुत हिमस्ति न खलु राजस विवाहकाले । न सुर्वे वात्मनो कीदृशार्थे पञ्चाशुतत्वाद्वाहुरप्यतकालि ॥ शान्ति 165. 30; उद्वाहकाले रतिरोपपत्तेः कालापरके सर्वपलायद्वारे । विप्रस्य चाप्येऽप्युक्तं तदेव; पञ्चाशुतत्वाद्वाहुरप्यतकालि ॥ तस्मिन् 16. 36. In आदि 32. 16 we have the verse न जन्म etc. as 'कालापरके सर्वपलायद्वारे पञ्चा'.

537. विवाहसमयमुपमर्शितं येनैवैवहोयमेकैवतम् । शौ. 23. 29.



marriage, in sexual intercourse, in jest and in giving relief to one distressed'. Vide Gr. R. pp. 507-508 quoting Hārīta Dharmasūtra on the same subject and mentioning four kinds of falsehood such as that by a witness, that in transactions of sale &c.

Nār. (IV. 235-236) states that when through<sup>338</sup> the carelessness of the creditor (who dies) there is no document nor witness to prove a debt and the defendant denies it, then one of three methods (of proof) may be resorted to, viz. *cakāṇḍa prakāṇḍam* (dunning the debtor each time to repay), *yuktileśa* (putting forth arguments) and *śapatha* (special oaths and ordeals)<sup>339</sup>. Kāt. (233 q. by Sm. C. II. p. 52 and Par. M. III. 91) has a similar verse. *Yukti* according to Nārada IV. 238 means<sup>340</sup> 'the creditor should follow (the debtor) by arguments and by himself remembering and by reminding the debtor of the time, the place, the relation (subsisting between the two)'. Others interpret *yukti* differently, that is, it means 'logical reasoning'. Kāt. (214) defines<sup>340</sup> 'yukti' as 'the ascertainment or knowledge of a *liṅga*' (i. e. a sign that leads on to an inference).

338. ममादाद्विनिवो यत्र न ह्यप्राप्तकथं न साक्षिणः । अथ चापहृते वादी तत्रोक्तविधि विधिः । चोदना प्रतिकालं च युक्तिलेखस्तथैव च । तृतीयः शपथः लोकसंज्ञेन साधयेत् कमात् । अतीत्यं चोदनामो यः पतिहन्त्याश्च उद्भवः । विधत्तुः पञ्चकालो वा परतोर्ध्वं सदापयेत् । नारद IV. 235-237; अविनाशप्रतिज्ञो यस्तु निषत्तं न प्रकीर्तयेत् । विधत्तुः पञ्चकालो वा परतोर्ध्वं निषत्तयेत् । कारवा. 386 q. by Sm. C. p. 168, which explains नारद as 'चोदना' चनदानादिविधयकरीणाया अप्रतिज्ञाहोऽपतिषेधः । सेवि यत्रयमन्य कणादिस्मृत्या न ह्यप्राप्तकथं एव निराकृत्यादिराकरणादुत्तरप्राप्तेन सम्बन्ध इत्यर्थोपविधिषयाश्च । मानविधय वा कणादिस्मृत्यं साधयन् प्रकृतिः समानम् ।

338a. The printed text of Nār. IV. 236 reads चोदना प्रतिकालं च as separate words. The Sm. C. II. p. 52 explains that as meaning 'pressing or urging the debtor three, four or five times in the presence of third persons without the debtor protesting against the demand'. The Madanaratna and V. P. p. 168 appear to read 'चोदनाप्रतिकालं' (equal to चोदना+अप्रतिकालं) and interpret 'if there is no denial or protest (by the debtor) when the creditor frequently demands the debt, then the court may presume that he is a debtor'. The Madanaratna explains 'चोदनाप्रतिकालः पञ्चकालो यत्र नैवेद्विनिषेधाय अप्रतिकालः अनिराकरणम्'.

339. चोदनाप्रतिज्ञां तु युक्तिलेखस्तथैव च । देयकादायं सम्बन्धपरिमाणक्रियाविधिः । नारद IV. 238; स्मृतिच. II. p. 52 explains युक्तिलेख as 'अनुस्मृत्यो अमुष्मिन् काले अनुनाथसंबन्धेन वत्परिणमेत् नाल्लभ्यते इति स्वदेवतादिद्विधीर्यायः'.

340. लिङ्गोक्तं तु युक्तिः स्वादिष्टानीह विवादः । कारवा. (214) quoted by पर. म. III. 91, व्यवहारसार p. 43, स्म. C. p. 167 which explains लिङ्गं अस्मिन् विवादविचारित उक्ताहुस्तथादेः उद्देशो निश्चयः तेन चाग्निद्वयाप्रमाणम्.

It is stated by Brhaspati that *anumāna* (inference<sup>341</sup> or presumption), as a means of deciding a law suit, is of three kinds, but it is inferior to witnesses (vide note 433 above). Vyāsa (q. by Sm. C. II. p. 95) states that *anumāna* is the same as *hetu* and *tarka*. V. P. (p. 167) remarks that (long continued) possession and the frequent urging by the creditor both lead to the inference of title and the taking of a loan respectively and are therefore to be comprehended under *yukti* according to the definition of Kātyāyana. Yet by popular usage *yukti* is restricted to presumptions arising from certain circumstances on the analogy of the maxim of 'gohallivada' explained below under 'steala'. *Yukti* therefore means circumstantial evidence from which an inference may be drawn about a fact in issue in a judicial proceeding. Āp. Dh.<sup>342</sup> S. II. 11. 29. 6 says that in case of doubt (judges) should decide from signs (i. e. by inference) or divine proof (ordeal). Vas. 19. 39 mentions the view of some sages that one who is found armed or wounded or in possession of the booty (stolen) may be declared to be (the thief or offender). Manu IX. 270 (= Matsya 227. 166) requires the just king not to condemn to death one accused of theft unless his guilt is proved as certain by proof that the accused had in his possession the articles stolen and tools for theft (for house-breaking). 'An adulterer is proved<sup>343</sup> to be so by being caught in such acts as playing with the hair of another's wife, an incendiary by being caught with a firebrand in his hand (near the house set on fire), a murderer by being found (near the murdered man) armed and a thief when caught with some of the articles stolen in his possession'—say Śaṅkha-Likhita<sup>344</sup>.

341. अनुमानं त्रिधा योक्तुं शक्यं त्रैविध्यं क्रियते । बृह. १. ४५ परा. मा. III. प. ८७ ; साहित्येखपात्रमानं च मातृषी त्रिविधा क्रियते । श्रुत्या धर्मज्ञाना च द्वौ तद्विधा स्मृता । बृहस्पति १. ४५ स्मृतिच. II. प. ५०, अथ. नि. प. ७३ and मद्भरण (ms) which latter remarks 'अथ श्रुतेः पुराणविद्वेषोऽनुमानमभावात् ।', अथ. नि. प. ७३ quotes बृहस्पति ३३ अनुमानं तु द्विविधं and explains श्रुतिः केचित्तद्वेषोऽनुमानं स्वयमेतत् ; मा. ३ कामाहित्येकादिकमप्यभिकारादनुमायवति, अनुमायवता वा कथयतीत्यनुमानं द्विविधमिति शुङ्करोक्तम् ।

342. मन्वेदे सिद्धौ द्वेवेति शिक्तिर्य । आप. च. II. ११. २९. ६

343. कस्यचित्पिण्डमनुमायारजःपिण्ड उरकाहलोऽनुमायः कस्यचित्पिण्डोऽनुमायः इत्येव । शङ्खालिखित १. ४५ परा. मा. III. ११९. स्मृतिच. II. प. ९५, अथ. प. १६९.

344. Compare sec. 114 of the Indian Evidence Act which lays down how a court is to draw presumptions of fact from the common course of natural events in relation to the facts of the case before it. Illustration (a) to which it 'the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession'.



Kaṭ.<sup>345</sup> IV. 12 and Yāj. II. 283 similarly say that adultery may be inferred from (the man and woman) being caught in the act of dalliance with the hair or from the signs left (such as marks of nails or teeth on the lips, cheek &c.) after carnal enjoyment or from the admission of the woman concerned (or of both). Nār. (IV. 172-175) declares that there are six kinds of disputes in which the indications (or circumstances) themselves serve as witnesses and lead to a conclusion without the testimony of witnesses viz. one found with a fire-brand in his hand (near the scene of arson) may be inferred to be the incendiary, one armed<sup>346</sup> (found near the scene of murder) as the murderer, one caught dallying with the hair of another's wife as an adulterer, one with a spade in his hand near a breached embankment as the person who caused the breach in it and one armed with an axe as the feller of a tree, a person guilty of an assault may be inferred to be so from visible signs (such as his club or sword being smeared with blood). But Nār. IV. 176 gives the warning that in such cases it is necessary to be careful in arriving at a conclusion, since a person in order to bring into trouble another whom he hates may create marks of injury on himself. Kā. (337-338) further provides<sup>347</sup> that where one litigant proves as against his opponent (such as a debtor) either the offer of a bribe, or the effacing of the means of recognition (such as effacing one's signature on a document) or holding out temptations (to the witnesses or *sahyās*) or the concealment of his wealth (to avoid its being attached in execution of a decree), there the original claim (such as a debt) may be presumed to be proved even if he (the opponent) denies his liability.

345. केशकेसिकं संग्रहणम् । उपलब्धुनाद्वा करीरोगमोमानां उज्जलेभ्यः स्त्रीवचनाद्वा । कौटिल्य IV. 12.

346. Best on 'Evidence' (12th ed. 1922) sec. 294 cites as an illustration of circumstantial evidence the fact of one armed being regarded as the probable murderer in certain cases. Compare Wills on 'Circumstantial evidence' (7th ed. of 1937 English and Indian combined) p. 145 'Amongst the most forcible of presumptive indications may be mentioned all attempts to pollute or disturb the current of truth or justice, or to prevent a fair or impartial trial by endeavour to intimidate, suborn, bribe or otherwise tamper with the prosecutor, or the witnesses or the officers of justice, or by the concealment, suppression, destruction, alteration of any article of real evidence'.

347. दाम् पद्मापमानेहः संजलेभक्रियाः च वा । वित्तपन्नने चैव हेतवो हि विभावकाः । एवामन्यतमो यच्च वादिना माविशो मनेत् । मूलक्रिया तु तत्र स्याद् भाविते वादि-  
निष्ठे च ज्ञान्या. (337-338) q. by Mr. S. p. 169, विवादसङ्ग्रह p. 188 (only the first), which reads वित्तपन्ननम्.

Judges often repeat from the Bench the words 'witnesses may lie, but circumstances cannot'. But this so-called maxim is often dangerous. Circumstantial evidence leads to conclusions that are in several instances false. The ancient Hindu lawyers were quite aware of the dangers of drawing inferences from circumstantial evidence. Nārada's warning has already been mentioned (p. 356). Kaut.<sup>548</sup> (in IV. 8) remarks: 'even one not a thief may by chance be on the way by which thieves pass and one meeting thieves is seen to be apprehended as a thief because he is mixed up in dress, arms and articles carried with the thieves or is found near the articles stolen, just as Māṇḍavya though not a thief declared himself to be a thief for fear of being subjected to torture: therefore (the king) should punish one only after thorough examination'. Māṇḍavya's is a leading case on the danger of relying on purely circumstantial evidence. Brhaspati<sup>549</sup> also remarks that 'a decision should not be arrived at merely by relying on the words of texts; for, if judges come to a conclusion without applying careful reasoning, loss of dharma results; a thief is held to be not a thief and a good man is held to be a wicked one in a judicial proceeding (not arrived at with proper reasoning). The sage Māṇḍavya was held to be a thief on account of the decision being arrived at without proper reasoning'<sup>550</sup>.

The 9th Act of the *Mṛcchakatika* is a standing literary condemnation of conclusions about guilt drawn from circumstantial evidence and of how judicial procedure is vitiated (of *vijayadhara-dunḥatā*, as the author says in Act I).

Nar. IV. 289 provides that when even circumstantial evidence and presumptions therefrom do not enable the court to arrive at a decision, the judge should press the litigant with

548. इदंते क्षत्रोरोति चोरमते पट्टच्छया संनिपाते चोरनिशङ्कमयमहमासास्तेन पृथग्गतो हसः, चोरमाण्डव्योपपत्तिन वा यथा हि माण्डव्यः कर्तव्यमपवादचोरचोरोदरोरिति वचनाः । तस्मात्तस्मात्करणं नियमयेत् । कीदृश्य IV. 8.

549. केवलं शास्त्रमात्रेण न कर्तव्यो हि निर्णयः । इतिहोमविचारे हि प्रमत्तानि प्रजायन्ते । चोरोदचोरः माण्डव्यापुत्रोपति स्ववहारतः । इति विना विचारेण माण्डव्यचोरोत्तमः । इह. व. by sv. u. pp. 13-14, var. na. III. p. 39. The *स्मृतिच.* II. p. 25 quotes a verse of वासु (I. 42) 'पारसचोरोति चोरानं चोरिचारापारचोरानम् । अचोर-चोरानं वतते माण्डव्यो स्ववहारतः' . Vide note 332 above for other references to माण्डव्य.

550. Wills' work 'Principles of circumstantial evidence' (English and Indian ed. combined, 7th. ed. pp. 39-48) contains a lucid exposition of the value and defects of purely circumstantial evidence.



śapathas (oaths and ordeals) according to the place, time and strength of the litigant, such as fire, water, his spiritual merit and others. Manu VIII. 109 also says that when there are no witnesses the truth would have to be found out by śapathas. Divine proof is called *daivikakriyā* or *samayakriyā* (Visnu Dh. S. IX. 1). Some writers make a distinction between śapathas (special oaths) and ordeals (*dāyas*), others (like Manu VIII. 109-114, Nār. IV. 239) do not. For example, the Vivādatandra quotes Nār. IV. 247 'when there is no witness in a dispute between litigants, there the judge should decide by means of ordeals<sup>551</sup> and various śapathas'. Acc. to the Mit. (on Yāj. II. 96) and S. V. (p. 106) both special oaths and ordeals are divine proof (*daiva pramāṇa*), but in disputes of small value śapathas (oaths) were generally employed, while ordeals were resorted to only in serious disputes or crimes. The Mit. (on Yāj. II. 96), the V. May. p. 46 and V. P. (p. 170) state that ordeals are those that generally end in immediate decision of the dispute, while śapathas take time for decision (because after the oath the king has to wait for a week or more to see whether a calamity befalls the person taking the special oath). Vyāsa quoted by Sm. C. II. p. 96 employs the word śapathas for both special oaths (taken as to one's 'satya') and ordeals like balance. Sankha-Likhita state that divine proofs are the balance, eating poison, entering fire, holding a piece of (hot) iron, offering one's merit acquired by sacrifices and charity and the king should make him undergo other śapathas<sup>552</sup>. Brihaspati says that where documents or witnesses do not lead to a certain decision or where inference from circumstantial evidence also is confusing, there the matter is to be decided by divine proof<sup>553</sup>.

Special oaths were taken not only in judicial proceedings, but also in ordinary dealings to clinch one's assertion or to clear one's character or reputation. Nār. (IV. 243-244) refers to

551. यदा साक्षी न विद्येत विवादे यदा नृणां वृत्ताम् । यदा दिव्यैः परितेन प्रपद्येत् पुनः  
निवेदः ॥ कारक IV. 247 q. by विवादचन्द्र p. 112 and म. वि. p. 106. अर्थानुसारः  
शपथः स्तुतः साधनद्वयः ॥ याम् in स्तुतिच II. 26.

552. तत्र दिव्यं नाम तुल्यधारणं विवाशमन्त्रिवेशो लोहधारणमिष्टाहुनेन्दुधामस्यैव  
प्रधानं कारकम् । शङ्खलिखित q. in वरा, म. III. p. 151, स्तुतिच II. p. 26, अपराक  
p. 694. The स्प. नि. p. 140 reads विवाशमन्त्रिवेशो and इष्टाहुनेन्दुधामः.

553. लिखिते साक्षिद्वये च सन्दिग्धपर्यं जायते । अनुमाने च सम्यगेत तत्र दिव्यं  
विशोधयन् ॥ वृह. q. by म. p. 333, अपराक p. 629, विवादचन्द्र p. 111 (reads  
यत्पर्यन्तं as the last word).

the special oaths taken for clearing themselves by Vasiṣṭha when he was suspected to be a *yātudhāna* (a demon or sorcerer) and by the seven sages together with Indra, who (sages) were suspected to have stolen lotus fibres (by each among them<sup>554</sup>). Manu VIII 110 also speaks of the *śapatha* taken by Vasiṣṭha before Sudās, son of Pijavana (when the sage was charged by Viśvāmitra with the offence of devouring his own hundred sons). Nārada (IV. 343) refers to Rg. VII. 104. 15-16 in the first of which Vasiṣṭha made the imprecation,<sup>555</sup> 'May I die this very day if I am a *yātudhāna* or if I injured the life of a human being! May he who falsely addressed me as *yātudhāna* be deprived of his ten valiant sons'! Manu VIII. 110 also refers to the same hymn<sup>556</sup>. Manu VIII. 113 (= Nār. IV. 199) referred to above (p. 343) states the various oaths to be taken or administered to the parties according to their respective castes. Manu VIII. 114 further provides for special oaths for litigants by touching the heads of their sons and wives. That *śapatha* taken by *satya* was common in very ancient times appears from Pāp. V. 4. 66 (*satyaśapatha*).<sup>557</sup> Nār. IV. 249 prescribes that in charges of grave offences ordeals may be resorted to and *śapathas* in matters of small moment. Nār. IV. 248 mentions 'truth, horses and arms, kine, grains and gold, the feet of (the images of) gods and the ancestors, acts of charity and good deeds (*sukṛta*) are to be employed. In *śapathas* as declared by Manu.' Brhaspati<sup>558</sup> enumerates the special

554. In the Anuśāsanaparyā 93. 13-15 it is narrated that each of the seven sages suspected the others of the theft of lotus-fibres and that they cleared themselves by taking oaths. Indra is said to have taken an oath when he was the subject of suspicion in relation to Abhaya. Vide Best on 'Evidence' (12th ed. of 1922) pp. 42-43 sections 26-29 for the employment of oaths in all ancient societies in courts as well as outside, for the forms and sanctions of oaths and for the arguments urged against their use.

555. अथा सृष्टिर्वायुं वातुधानो अस्मि यदि वायुस्तव दूषयत् । अथा स वीरद्वज-भिर्नि पूरा वा ना मोषं वातुधानेवाह ॥ अ. VII. 104. 15. The *बृहदेकता* (VI. 33-34) refers to the story thus. वायुद्वजो तु सुकरम अहम्भा येन वायुभिः । वृक्षशोकापरीक्षिता शयने निशपन्निव । इते दूषयन्ते तस्मिन् वसिष्ठो दुःखितस्तदा । रक्षोघ्नेन शपामु तदा-मेवेति च धृतिः ।

556. The story of king Kalmāṣapāda earned to be a demon by Sakti, eldest son of Vasiṣṭha, who then devoured one hundred sons of Vasiṣṭha is narrated in Ādiparva 176 (cr. ed. 166).

557. On सत्यदशपथे, the काशिका says= सत्यशब्दोऽयमभिप्रेतवचनः । कश्चि-च्छपथो च वर्तते सत्येन शपथोद्धियमिति । तस्यायं प्रतिषेधः । सत्यशब्दोऽपि भाग्यं नमिह । नमैत-केतापमिति तस्य करोतीत्यर्थः । अशपथ इति किम् । सत्यं करोति नाश्रयः ।

558. सत्यवाक्यमश्रयमि मोषान्कनकानि च । देवनाग्नयथादाह दूषयतिशिरान च । एते तु शपथः योकाः स्वल्पेयं मुक्ताः सदा । बृह. 10. २५ लिख. II. p. 96. वरा-स. III. p. 151.



oaths mentioned by Manu and Nār. and adds that they are to be employed in small matters (civil and criminal). The Viṣṇu Dh. S. (IX. 5-10) prescribes that when the litigant is a śūdra and the dispute relates to a matter worth less than one, two, three, four or five *kṛṣṇas* he should swear respectively by holding in his hand *dūrvā* grass, sesame, silver, gold or earth taken from ploughed land, that (IX. 11-12) beyond that value various ordeals may be offered and that oaths with similar objects in the hands may be offered to vaiśyas, kṣatriyas and brāhmanas when the value of the subject matter is double, three times or four times of the value in the case of a śūdra. Manu VIII. 111 gives the admonition that a wise man should not make a false oath, because by so doing he incurs loss (of reputation) here and after death (by falling into Hell). Yāj. II. 236 prescribes a fine of 100 *paṇas* for one who takes an improper or profane oath;<sup>551</sup>

The benefit of doubt is to be given, according to modern ideas on the administration of justice, to the accused. This principle was put forward several centuries before Christ by Āp. Dh. S. II. 5. 11. 2 'the king should not punish when there is a doubt' (about a man's guilt<sup>552</sup>).

551. The Mit. explains 'यच्चाहुर्ल मातरं मनिषासीत्वेवं शपथं करोति ।'

552. न च सन्देहे दृष्टे कुर्यात् । आप. घ. सू. II. 5. 11. 2.

## CHAPTER XIV

### ORDEALS

A brief history of ordeals may be set out here. Rg. I. 158. 4-5, wherein<sup>561</sup> the sage Dirghatamas, son of Ucatha, prays that the fire of faggots heaped tenfold may not burn him and that the rivers in which he was thrown bound hand and foot may not engulf him, are regarded by some as a reference to the ordeal of fire and water. Yet in those verses there is probably no reference to ordeals, but to the cruel treatment of Dirghatamas by *dāsas* headed by Truṭata. Rg. III. 53. 22 also, where it<sup>562</sup> is said 'he heats the axe (or acc. to Śaṅkara 'just as the tree is injured by contact with the axe &c. )', does not contain a clear or certain reference to the ordeal of holding the heated axe. Atharvaveda<sup>563</sup> II. 12 is held by several Western scholars to contain a reference to the fire ordeal. This also is far from certain, though verse 8 may lend some support to that view<sup>564</sup>. The Pañcaviṃśa (or Tāṇḍya) Brāhmaṇa 14. 6. 6 refers<sup>565</sup> to the story of Vatsa, who was abused by his step-brother that the former was the son of a śūdra woman, against which Vatsa protested, urged that he was a brāhmaṇa, entered fire to prove the truth of his assertion and came out of fire unscathed. This is referred to by Manu VIII. 116. This is probably the earliest

561. मा गमेधो दशतपथितो धातुः प वद्धो वद्धस्तमनि आदति क्षात् । न मा गरकयो नातुतमा द्याता वदी सुसमन्वयनराधुः । अ. I. 158. 4-5.

562. परतुं चिद्धि वपति शिष्यते चिद्धि वृक्षति । उता चिद्धिन्तु वेदन्ती ययस्ता केनमरवति । अ. III. 53. 22.

563. आ वृधानि ते पदं समिद्धे जातवेदसि । अग्निः शरीरे वेनेद्वर्तु नागति गच्छतु । अथर्ववेद II. 12. 8.

564. Vide Proceedings of the American Oriental Society, vol. XIII pp. CCXXI-XXVI where, after referring to the views of Ludwig (III. p. 445), Weber (Indische Studien XIII. p. 164) and Zimmer (Altindische Leben, p. 185) about the mention of the fire ordeal in the above hymn, it is sought to be proved that the hymn refers to re-establishing a soiled reputation and reliance is placed on the Kauṣhasūtra (47. 25 ff.) which does not treat it as a fire ordeal hymn.

565. वत्सश्च ये मेधातिथिश्च कावरावास्ता ते वत्स मेधातिथिराकोदवृक्षाद्वयोमि सुवर्ग-  
द्वय इति । सोमवीर्यतेनाग्निं वदवाच वततो गी बद्धो वामिति । वास्तवेन वततो वत्समेधातिथिश्च  
मेधातिथिस्तत्र न राम च गीवत् । तत्त्वमनावाकावत् 14. 6. 6.



and clearest reference in ancient Sanskrit Literature to the fire ordeal. Next comes the reference to holding in the hand the heated head of an axe by a person accused of theft to prove his innocence contained in the Chāndogya<sup>566</sup> Upanisad VI. 16. 1. Āp. Dh. S. II. 11. 29. 6 refers to inference and divine proof (quoted above n. 543). In another place (II. 5. 11. 3) Āpastamba states that after carefully considering (the charge before him) by means of divine proof and questioning (of witnesses) the king should set about awarding punishment. Śaṅkha-Likhita (n. 553) name four ordeals, viz. those of balance, poison, water and holding red-hot iron<sup>567</sup>. Manu VIII. 114 mentions only two viz. the holding of fire (i. e. red-hot iron) in the hand or plunging in water, but Nār. IV. 251 states that Manu declared five kinds of ordeals. Yaj. II. 95, Viṣṇu Dh. S. IX-XIV and Nār. IV. 252 mention five viz. balance, fire, water, poison and *kośa* (consecrated water). Nārada, however, knew, two more viz. *taptamāṣa* (IV. 343) and *tanḍula* (IV. 337). Bṛhaspati (S. B. E. vol. 33 p. 315 verses 4 and 5) and Pītāmaha speak of nine (Aparārka pp. 628, 694 respectively).

Yaj. II. 95-113, Viṣṇu Dh. S. IX-XIV, Nār. IV. 239-348, Kat. 411-461, Śūkra IV. 5. 233-270 treat of the several ordeal<sup>568</sup> Pītāmaha contained, as the quotations from the digests show, the most elaborate treatment. That ordeals had attained great vogue in the early centuries of the Christian era is shown by the Mrochakatika Act IX. 43 (where the ordeals of poison, water, balance and fire are expressly named) and by Bāṇa who mentions the same four in Kādambarī, para 47<sup>569</sup>. Among the digests and commentaries the Mītakṣara, the Smṛticandrikā, the Divyātattva of Raghunandana, the Vyavahāramayūkha and the Vyavahāraprakāśa contain the most elaborate treatment of ordeals<sup>569</sup>.

566. इदं च सोम्येत हस्तपुहीतमानसं वपुर्हारीतुं श्वेदमकार्षीत् परब्रह्मणे तपतेति स यदि वपुः कर्मा भवति ततः पञ्चासुतनाम्नानि कुर्वते सोऽसुतानामिहैव सोऽसुतानामवगन्तव्यं परब्रह्मणे तपतिपुद्गलि स पुद्गलेऽथ वपुते । चाण्डोग्य VI. 16. 1.

567. घटाद्या धर्मज्ञापयन्ता देवीं नवविधा क्रिया । बृह. प. by अथर्ववेद 628; धर्मो विदुषो नैव विमं कोऽप्यथ वदन्तः । तपते च तपतुल्यः शोकं सद्यो वसमापयन् । अष्टमे पाठे-मिलयुक्तं नयमं धर्मज्ञं सवेत् । पितृमह प. by अथर्ववेद p. 694; the same verses are quoted as बृहस्पति's in दिग्विजय p. 374 and अ. म. p. 43.

568. वनकर्मिणी शरिरेवेष्टः ... .. अस्तिनामग्निधारणं तदानीं तुलारोहयन्तमस्योद्भवे विदुषाभिः । कादम्बरी para 47.

569. Those interested in the farther study of ordeals may consult my translation of and notes on the Vyavahāramayūkha.

*Divya* is defined as 'that which decides a matter (in dispute) not determined by human means of proof' (V. Mayūkha) or 'that which decides what cannot be or is not to be decided by human means of proof' (*Divyatatva* 570 p. 574). *Medhātithi* on Manu VIII. 116 discusses the question how ordeals can be relied upon for the discovery of truth. The objection is raised that fire and water are natural forces that act in a uniform way and are not intelligent beings which may change their minds by an appeal to them. Therefore, the objector says, ordeals and oaths are like magic and are only meant to frighten the parties into telling the truth. It is further objected that thieves may (by some trick) not be burnt in the fire ordeal and good men are seen to suffer burns. The reply is: the usefulness of ordeals cannot be negated by these examples of failures, as they are not frequent and as even direct perception and inference sometimes lead to uncertain results. No one, however, says that these latter should not be relied upon. Just as one relies on witnesses in deciding a matter (who may for aught one knows be telling lies), so reliance can be placed on ordeals. Where there is failure in case of ordeals, it must be held to be due to the results of the performer's actions in past lives. The general rule as stated by Yaj. II. 22, Nār. II. 29, IV. 239, *Brhaspati* 571, Kāt. (317) and *Pitāmaha* is that ordeals were to be resorted to only if no human evidence (witnesses, documents, possession) or circumstantial evidence was available. Kāt. (318-319) prescribes that 572 if one party relies on human means of proof and the other on divine proof, the king (or judge) is to accept human means and not divine and that if human means of proof reach (i.e. are able to establish) only a part of the allegations (in the plaint), then human means should be accepted and no divine modes of proof, even though they may be complete (i.e. completely cover all allegations). When Nār. II. 30 (= IV. 241) states that divine means of proof are to be resorted to when a transaction takes place in a forest, in

570. इह मातृव्यमायाविर्भेदकवादि निर्वाचके पक्षद्विपक्षिणि लोकप्रसिद्धम् । अस्मिन् मातृव्यमायासत्त्वोपि यत्र चैव पक्षद्वयं कारस्तवाप्येवमस्तीति सूचितम् । विष्णुसहस्रं p. 574.

571. यमाणादीनि वादे तु निर्वाचा द्वैतिका क्रियाः । इह. in श्र. म. p. 169; संभवे साक्षिणां वाजो द्वैतिकां वल्लयेत् क्रियाम् । कतवा. in स्मृतिच. II. p. 31; परिमन् परिमन् विवादे तु साक्षिणां नास्ति सम्भवः । साहसेषु विशेषेण तत्र विवासाणि व्यापयेत् । विष्णुसह in स्मृतिच. II. p. 93.

572. यत्रको मातृवी बुदादयो व्याकु द्वैतिकाः । मातृवी तत्र दृष्टीयाश्च तु द्वैती क्रियाः स्याः । यत्रोददेशापासादि क्रिया विद्येत मातृवी । सा द्वाह्या म तु इत्यादि द्वैतिका वदतां स्यात् । कात्या० in मिता० on वा. II. 22 and श्र. म. p. 315.



a lonely place, at night, inside a house, in cases of *sāhasa* and when a deposit is denied, or when Kāt. (230) prescribes that trial by ordeals is to be resorted to in the case of persons accused of committing *sāhasa* in secret (i.e. by wearing masks &c.),<sup>573</sup> those words only apply where it is impossible to have human evidence. Kāt. (229) states an exception to this viz. when the dispute<sup>574</sup> investigated is about *sāhasa* or about assault or abuse and defamation and in causes that spring from the use of force there is an option that witnesses or divine proof may be resorted to. Nār. IV. 242 states that divine proof could be resorted to when the chastity of women was in question, in theft and *sāhasa* and in all cases of the denial of monetary liability. Sītā's ordeal of fire at once comes to mind as an illustration of Nārada's rule. Brhaspati<sup>575</sup> and Pitāmaha say that in disputes about immoveable property divine proof should be avoided, which does not forbid *dieya* altogether, but only where the evidence of neighbours or of a document is available and that in the latter case even if the defendant offers to pay a fine if he fails by the divine proof, *dieya* is not to be resorted to. The ordinary rule was that ordeals were to be administered to the defendant<sup>576</sup> (Kāt. 411 = Viṣṇu Dh. S. IX. 21). But Yaj. II. 96 gives an option that any one of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat a fine or undergo physical punishment. This means that human proof is adduced to prove a positive proposition, that divine proof may be resorted to prove a negative proposition as well (e.g. a defendant denying the claim for a debt may prove by *dieya* that he did not borrow a loan). Making an offer to pay a fine or undergo corporal punishment is said to be being *śīrṣakastha*<sup>577</sup> or *śīrṣa*

573. युद्धस्थानिकानां तु मासं दिवसैः परीक्षन्तः । कात्या. q. by मिता. on वा. II. 22, स्मृतिच. II. p. 31.

574. राज्ञो माहमे वादे वाचये दण्डवाचिके । कलेइपुत्रेण कार्येण मासिने विप्र-  
मेव वा । कात्या. in मिता on वा. II. 22, अथार्क p. 629, स्मृतिच. II. p. 31.

575. स्वाधेयु विप्रदेयु विप्रसिद्धिः परिचयः । विप्रमह in मिता. on वा. II. 22,  
स्मृतिच. II. p. 33. वाक्यादयः सर्वथादे निमित्तं द्वैविध्यं किम । युद्ध. q. by अथार्क  
p. 629, स्मृतिच. II. p. 33.

576. न कश्चिदभियोगार्थं द्विदेयु विनिर्वाहयेत् । अभियुक्तयः दण्डार्थं द्विधं द्वि-  
विचारकः । कात्या. q. by अथार्क p. 695, पर. म. III. 152, स्व. म. p. 172.

577. On शीर्षकस्थेऽभियोगे (वा. II. 95) the मिता. explains 'शीर्षकं शिरो  
व्यवहारस्य चतुर्थः पादो जयपराजयलक्षणशून्यं च दण्डो लक्षणे तत्र तिष्ठतीति शीर्षकस्थः  
लक्षणदण्डव्यवहारः ।' *Śīrṣa* (head) indicates the fourth stage of a law-suit  
viz. success or defeat and since fine is imposed on the defeated party,  
it indicates fine or corporal punishment.

(in Yāj. 95, Viṣṇu Dh. S. IX. 20, 22, Pītāmaha, Nār. IV. 257, Kāt. 412-413). Yāj. II. 95 prescribes that the ordeals of balance, fire, poison and water were to be prescribed in disputes of great value and not elsewhere and in II. 99 he says that all claims above 1000 paṇas (of copper) are to be regarded as of great value, but in charges of treason and of the committing of any one of the five grave sins (*mahāpātakas*) any one of these four ordeals may be resorted to without regard to value and without any offer to pay fine on defeat. So also these four ordeals were to be offered to the defendant where the plaintiff offered to pay a fine on defeat. The ordeal of *koṣa* was allowed in all claims whether of high value or low value or whether the plaintiff offered to pay a fine on defeat or not.

Yāj. II. 98 states that the ordeal of balance should be given to women, a minor (under 16), a very old person (above eighty years), the blind, the cripple, brāhmanas and the diseased; the fire ordeal (i. e. heated ploughshare and heated māsa) to kṣatriyas, water ordeal to vaiśyas, poison to śūdras. Nār. IV. 335 assigns ordeals to the different varṇas similarly. Nār. IV. 256 prescribes that ordeals should not be undergone by those who are observing a vow, who are much distressed or who are performing austerities, and by women. Pītāmaha quoted by Mit. (on Yāj. II. 98) adds minors and old persons to these. The Sm. C. II. p. 193 explains this as referring to the ordeals of fire, poison and water only. Another Smṛti (q. by Mit. on Yāj. II. 98) prescribes that the ordeals of balance and *koṣamay* be offered to women, minors and the others mentioned above. There is in all these rules a spirit of tolerance, kindness and concern for the weaknesses of mankind. Kāt. (423) holds<sup>578</sup> that persons of the higher castes who are cowherds, traders, artisans, bards, domestic servants and usurers should be given ordeals as if they were śūdras. Kāt. (422) allows all ordeals to members of all castes, except that brāhmanas are not to undergo the poison ordeal. Kāt. (424-426) prescribes that the ordeal of fire should not be offered to blacksmiths or those who are leprous nor of water to those who ply boats or who suffer from difficulty in breathing or cough, nor poison to those who are experts in incantations and *yogic* practices or who suffer from (excess

578. गोरक्षकान्वायिककौस्तुभ कावकुलितान्न । देवदत्ताधुनिकार्थैव साधयेच्छु-  
द्धं हिताय । काल्या. q. by अथर्वक p. 698, न. वि. p. 150.



of) bile or phlegm, nor *kōṣa* to those who are drunkards, to persons fond of women, to gamblers and to those who are atheists. Viṣṇu Dh. S. IX. 25, 29 and Nār. IV. 255, 332 contain similar provisions. Kāt. (427-430) further provides that no ordeal should be allowed to be performed personally by the following persons, viz. those charged with the murder of their father, mother, a brāhmana, their teacher, a minor, a woman and the king; those guilty of the (five) grave sins; particularly those that are atheists; those who wear (or subsist by) peculiar sect marks; great rogues; those who are experts in incantations and *yoga* practices; those who are the progeny of unions of persons of different varṇas; those who repeatedly engage in sin; in the case of these the king should offer ordeals to good men appointed by them on their behalf and if such good men are not willing then they should appoint their own relatives. Śāṅkha-Likhita also refer to the appointment of friends or relatives as representatives (Aparārka p. 842)<sup>579</sup>. Kāt. (433)<sup>580</sup> lays down the following rather remarkable provision, viz. when untouchables, men of lowest castes, slaves, *mlecchas* and those born of mixed unions in the reverse order of the castes are guilty of crimes, the determination of their guilt (by the above mentioned ordeals) should not be made by the king; he should indicate such ordeals as are in vogue among them. The Sm. C. and Par. M. say that this applies

579. असालिपनिहिते दिग्भ्यः । अथवा मित्रैः सज्जनैरात्मनं वा शोधयेद्देव । स चेतद्विषयोऽस्मिन् चार्थे वापयेत् । इन्द्रसिंहिव q. by अपरांका p. 842.

580. अतृप्तवायमदात्मनो म्लेच्छानां वापकारिणाच । गतिर्योऽप्यप्यदात्मनो निश्चयो न तु राजनि । तत्पत्तिज्ञानि दिग्भ्यां संसृजे तेषु निदिशेत् । कात्या. q. by मित्रा. on वा. II. 99, स्मृतिच. II. p. 104, परा. म. III. p. 161; 'तत्पत्तिज्ञाने सर्पयदादीनि' मय्यहारत्तन p. 579; अथ. p. 180 'तत्पत्तिज्ञाने सर्पयदादीनि इति स्तुतिरप्ये'. In the Gadag Inscription of Vikramāditya VI dated 1008 A. D. (E. I. vol. 13 p. 348 at p. 360 there is this passage 'we handle boiling water, we strike with the hand a great snake placed in a jar or we may well mount the balance'. In I. A. vol. 19 p. 242 at p. 246 it is stated in an inscription dated 1208 A. D. of the Mahāmaṇḍalavarā Kārtavīrya IV that Candrikā (or Candrikadevi), the queen of Lakṣmidhara of the Rattas of Suvarṇabhūmi (Saundarī) was a pativrati and got success by *ghaṭasarpa* 'माति श्वायवहणा पतिव्रतत्वा देवी चिरं चन्द्रिका संयाता घटसर्पजातविजयं लक्ष्मीधरयेवमी'. The Bombay Gazetteer vol. 1 part 2, p. 356 n. 3 gives a quotation from the Asiatic Researches vol. 1, where the ordeal of putting a ring or coin in a vessel in which a snake has been already placed and asking a person to take it out is mentioned. Vide also Report of South Indian Epigraphy for 1924 para 66 for the ordeal of dipping the fingers in boiling ghee or oil.

only when they cannot secure relatives or other persons appointed by them to undergo the usual ordeals on their behalf. The Vyavahāratattva (p. 579) explains that the ordeals referred to among mlecchas and others are the snake in the jar and the like. This seems to have consisted in taking out a ring or coin with the hand from a jar in which a snake was placed; if there was no snake-bite or no effect even if the snake bit, the person was declared innocent. Vide note 580. Yaj. II. 97 and Nār. IV. 268, 320 prescribe that all ordeals are to be administered by the chief justice in the morning at sunrise or in the forenoon in the presence of the king, the sabhyas and brāhmanas. The Mit. adds that a Sunday is the proper day according to the usage of respectable people (*śiṣṭas*). Pītāmaha specially provides that the water ordeal should be administered in the noon and poison in the last watch of the night (Mit. on Yaj. II. 97). Certain seasons and months were either appropriate or inappropriate to certain ordeals e. g. Nār. IV. 254 states that the fire ordeal should be given in the rainy season, balance in the winter (*śiśira*), water in summer, poison when the season is cool. Nār. IV. 259 prohibits water ordeal in the cold season, fire in summer, poison in the rainy season and balance while the wind blows violently. The Mit. (on Yaj. II. 97) and Par. M. III. 162 quote Pītāmaha to the effect that the months of Caitra, Vaisākha and Mārgaśīrṣa are common to all ordeals, *kōśa* and balance may be administered in all months.

As regards the place, Pītāmaha prescribes that ordeals are to be administered by the king or the judge appointed by the king in the presence of learned brāhmanas and the public (or the ministers)<sup>581</sup>. Kāt. (434-35 and 437) provides:<sup>582</sup> 'ordeals should be administered in some well-known temple in the case of men accused of grave sins and near the royal gate in the case

581. न्यायस्य दायपेक्षितं राजा वाधिकृतोपि वा । ब्राह्मणानां कुलवर्ता वृद्धादीनां सर्वे च ॥ विदामतु ।। परा. मा. III. 164, स. वि. p. 163.

582. इन्द्रधर्मादभिज्ञानानां महापातकिनो घृणात् । सुपक्षेने मृगानां राजद्वारे यथो-  
जयेत् ॥ मातितोम्यमृगानां द्विषे देवं चतुर्वधे । अशोकेषु सनानप्ये द्विषे देवं विदुर्धवाः ॥  
अवेकालद्वन्मि चद्विषोऽसकृतानि च । स्वामिचारं महापेक्षु कुर्वन्तोऽन संशयः ॥ कारय. In  
मिता. (०० वा. II. 99), परा. मा. III. 163, स्मृतिच. II. p. 105, स. वि. p. 163.

इन्द्रधर्मादभिज्ञानानां महापातकिनो घृणात् । स्मृतिच. II. p. 104 and स. वि. p. 163; 'इन्द्र-  
धर्माः इन्द्रधर्मादभिज्ञानानां' द्विषन्तः p. 376; 'इन्द्रधर्मादभिज्ञानानां' अ. य. p. 182. For  
the festival of Indra, vide H. of Dh. vol. II, p. 398, 825-826.  
On स्वामिचारं &c. the स्मृतिच. says 'चिद्विषदेवाद्यनादरे द्विषमाणाणां दानिर्भवती-  
त्यस्य स एव'.



of those charged with treason; in a public place where four roads meet in the case of those born of mixed unions in the reverse order of castes, in cases other than these in the hall of justice. When ordeals are administered in an improper place or at an improper time and when they are performed outside human habitation (in a lonely place) they fail as to the matter in hand (i. e. they cease to be decisive). Nār. IV. 265 prescribes that the balance should be planted in the hall of justice or at the royal gate or near a temple or where four roads meet.

The procedure common to all ordeals and described in the Mīt. on Yaj. II. 97 and 99, the V. May. pp. 52-55, V.P. pp. 183-186 (all relying on Pītāmaha) and Vyavahāra-nirnaya pp. 148-53 (relying on Prajāpati, Pītāmaha, Br.) is briefly as follows:—In ordeals the chief justice is to do every thing at the king's bidding as the *adhvaryu* priest does in all sacrifices. He should observe a fast and the *sodhya* (person undergoing the ordeal to clear himself) is also to do the same. Both are to bathe in the morning and the *sodhya* was to have his wet clothes on. The Chief Judge is to invoke the gods to the accompaniment of music and to offer flowers, sandal-wood paste and incense. He should fold his hands, face the east and invoke Dharma to be present at the ordeal (Dharma being the principal deity in ordeals) and assign places to Indra, Yama, Varuna and Kubera in the four principal quarters from the east and to Agni and other guardians of quarters in the corners of the principal quarters. He is to contemplate on the eight deities of the eight quarters as having different colours (viz. Indra as yellow, Yama as dark &c.). He is to assign the eight Vasus (repeating their names) to the south of Indra, the twelve Adityas (repeating their names) between Indra and Īśāna (i. e. between east and north-east), assign a place to the eleven Rudras to the west of Agni, assign a place to the seven Mother goddesses between Yama and Nirrti (between south and south-west), assign a place to Ganeśa to the north of Nirrti, to the Maruts (seven) to the north of Varuna; to the north of the balance (or the place of other ordeals) he should invoke Durgā. All these deities are to be invoked with appropriate Vedic mantras (set out in V. May.). He should offer the several items of worship from *arghya* (water offered by way of honour) to ornament to Dharma (as the principal deity) and then to the subsidiary deities from Indra to Durgā (according to appropriateness) and then sandalwood paste, flowers, incense, lamp and *nivedya* to the deities from Dharma to Durgā. The

flowers for Dharma are to be red. Up to this is the work of the Chief Justice. Sacrificial priests should offer into fire in the four quarters 108 oblations of clarified butter, boiled rice and fuel sticks with syllable *Om* and the *Gāyatrī* and with 'Om' and 'sāhā' at the end of each. Having written down on a leaf the subject matter for which the party is undergoing ordeal the leaf should be placed on the head of the *sodhya* with the *mantra*,<sup>583</sup> 'the sun, the moon, the wind, fire, heaven and earth, waters, the heart, Yama, day and night, the two twilights and Dharma know (see or mark) the deeds of men'.

The several ordeals will now be briefly described.

First comes *tulā* or *dhātā* (balance). A sacrificial tree (such as *khadira* or *udumbara*) should be cut to the accompaniment of vedic mantras (employed in making a sacrificial post). Two wooden posts made of that tree should support a transverse beam (called *akṣa*). The posts should be fixed in the ground, the part above ground being four cubits and that below being two cubits. This frame should face the east (i. e. the posts must be in the south and north). Then the beam of the balance was to be made from the same tree and was to be suspended from the transverse beam of the frame by means of a hook. Three iron rings were to be fastened to the beam of the balance, two at the end and one in the middle for suspending the balance from the transverse beam by means of a chain or string. Two scales were to be suspended at the two ends of the beam by hooks and strings from the iron rings fixed at the ends of the beam. On the two sides of the balance there should be two arches in which the scales should move and which should be ten angulas higher than the balance. There should be two perpendicular pendants made of clay hanging down from the arches and touching the upper surface of the balance. In the pan to the west the *sodhya* should be placed and weighed against clay, bricks and stones placed in the other pan. Then traders or goldsmiths or brasiars should examine the balance and bring it on a level with the two pendants hanging down from the arches and examine the perfect horizontality of the

583. The मन्त्र is आदिशब्दमन्त्रादिलोऽन्तश्च योऽङ्गिरापो इदं चमन्त्र । अथवा रात्रिश्च वसु च मन्त्रे धर्मोऽपि आनाति सरश्च वृत्तम् ॥ आदिपर्व 74. 30. It is to be noted that *Vishnu Sm.* quoted by the *Mitra* regards this verse of the *अदिपर्व* as a मन्त्र and *Praśapati* quoted by the *Vyavahārānirṇaya* p. 153 does the same. Compare for a similar verse *Manu* VIII. 86.



beam of the balance by spilling a little water on the beam. When the person sitting in one pan is equal in weight to the materials (clay &c.) in the other, a line should be drawn with chalk by the experts on the arch (to show the exact position of the pans). Then the man is made to get down from the pan and he is to invoke the balance as stated in Yaj. II. 101-102. 'O balance, you are the abode of truth, you were created by the gods for this purpose, declare the truth, free me from this (cloud of) suspicion. Mother! If I am a winner then take me lower, if I am pure take me upwards'. The person is then to hear exhortations about the result of untruth after putting the writing on his head (vide Nār. IV. 276 and Viṣṇu Dh. S. X. 9), then he is again to be placed in the pan to the accompaniment of invocations (Nār. IV. 278-279, Viṣṇu Dh. S. X. 10-11). A worthy brāhmaṇa learned in astronomy is to calculate the time of five *palas*<sup>584</sup> or *vināḍis*. Then his weight is again to be marked. If the person goes up (i. e. is found lighter than what he formerly weighed) he is declared innocent (acc. to the com. on Nār. IV. 283, V. Mayūkha p. 60, Dipakalika on Yaj. II. 102); if he weighs the same or goes down (i. e. weighs more) he is guilty. Then the person concerned is to distribute gifts to the judge, the brāhmaṇas and sacrificial priests and take leave of the deities invoked. Brihaspati (SBE vol. 33 p. 317 v. 19) states that he who weighs the same should be weighed once more. If the pan or the beam or the hooks break or the ropes give way owing to some visible cause then the procedure was to be repeated, but if the breaking is due to an unseen cause or accident, the person was to be declared guilty.

The ordeal of fire is as follows :—Nine circles with cowdung are to be drawn from west to east, they being meant for Agni, Varuṇa, Vāyu, Yama, Indra, Kubera, Soma, Savitṛ and all gods. Each circle was to be 16 *āṅgulas* in diameter and the space between two circles was to be 16 *āṅgulas*. In each circle kuśa grass was to be spread and the person to be tested was to plant his feet on them; ghee was to be offered into fire 108 times. A blacksmith by birth should heat in fire a ball of iron weighing 50 *palas* (16 *palas*<sup>585</sup> in the case of a weak man) and eight

584. A *vināḍi* is the time required for reciting 60 long syllables and 60 *vināḍis* make one *ghaṭikā*. So five *vināḍis* will be equal to two minutes.

585. A *pala* weighed 320 *guṇjās* according to the Līkavāṭī (I. 4). Acc. to Divyātattva (p. 608) 20 *palas* were equal to 60 *tolakas*, five *māṣas* and 4 *guṇjās*, which, while accepting the view that a *pala* is equal to 320 *guṇjās*, gives the rather modern measurement into *tolakas* (*tolas*).

āṅgulas in length till it becomes red-hot and emits sparks. Then all the details described above ending with the placing of the writing on the head of the *śodhya* are to be gone through by the judge and the fire (in the red-hot piece) is to be invoked with several mantras (such as Yaj. II. 104<sup>386</sup> and Viṣṇu Dh. S. XI. 11-12). The *śodhya* should stand in the first circle facing the east. Having made red marks on all cores of the hands of the *śodhya* on which grains of rice have been rubbed, he (the judge) should place seven leaves of the *āśvattha* tree on them and also grains of rice and curds and should fasten round them threads. Then the judge should carry the red-hot iron piece by means of a pair of tongs and place it in the hands of the *śodhya* (that are covered with leaves). Then the *śodhya* holding in both his hands the red-hot piece should walk from the first to the eighth circle not hurriedly but slowly and at ease. Having reached the 8th<sup>387</sup> circle he should throw the red-hot iron piece on to the 9th circle. Then the judge should rub on the hands of the *śodhya* rice grains and when the latter shows no hesitation at the rubbing and no injury on his hand at the end of the day he is declared to be innocent. Kal. (441) and Yaj. II. 107 provide that if the red-hot piece falls earlier (i.e. before reaching the 8th circle) or there is a doubt (whether his hands are injured or not) or if he loses his footing or is burnt elsewhere than on the hands he should again undergo the ordeal.

The ordeal of water as described in the *śmṛitis* and digests is rather complicated. The *Sm. C.* (II. p. 116) remarks that<sup>388</sup> as the ordeals of water and poison had gone out of vogue (in its day) it passes over the procedure of these and takes up the description of *kṣeta* ordeal after the fire ordeal. Having gone to a reservoir of water the judge should get erected on its bank a *toraga* (an arch) as high as the ear of the *śodhya* on an even and cowdunged plot. He should offer worship to Varuṇa (Lord of waters), to a bow of middling size and to three arrows (the points of which are made not of iron but of bamboo) with sandal

386. Before the red-hot iron is placed on his hands the *śodhya* repeats 'स्वसो सर्वभूतानामन्नाभ्यसि पावकः । साक्षिमतदुष्णपादेभ्यो ब्रुहि सत्यं कवे मनः । वा. II. 104; the *आविर्भव* 5. 27. (cr. ed. 5. 21) has the same verse (but reads दुष्णपादेभ्यो साधे ब्रुहि कवे वचः.).

387. अथ सप्तःशतवर्णान्तरितं कोकशयनमग्निवर्णं लोहपिण्डमजलिनावाप सप्त सर्पाणां मध्ये । इत्युल्लिखितं in *स्मृतिच* II. p. 112, १८. म. p. 196.

388. अथ जलविषये कलाजलप्राप्तत्वात् तद्विधिनमाहवाप कोकविशिष्टवर्णे । इत्युल्लिखितं II. p. 116.



paste, incense, lamp, flowers. A target is to be fixed at the distance of 150 *hashtas* ( cubits ) from the toraṇa. A post of some sacred tree is to be fixed in the water and a strong man of one of the three higher castes free from love or hatred for the *śodhya* is to stand in navel-deep water facing the east and holding the post. Then the judge is to make the *śodhya* stand in water, invoke the deities from Dharma to Durgā, perform all the rites up to the placing of the writing ( embodying the accusation ) on the head of the *śodhya*. A *kṣatriya* or a *brāhmaṇa* following the profession of arms who is of a pure heart and has observed a fast should discharge, while standing near the root of the toraṇa, three arrows at the target. The *śodhya* should invoke the water with the mantra, ' O Varuṇa ! save me by means of truth ' ( Yāj. II. 108 )<sup>589</sup>. Then a young but swift man should run to the spot where the second arrow struck the ground, and stand there holding that arrow in his hand. Another swift man stands at the root of the toraṇa whence the arrows were discharged. Then the judge claps his hands thrice. At the third clap the *śodhya* dives into the water seizing the thighs of the man standing in water and at the same time the swift man near the arch runs at his best speed to the place where the second arrow fell. The other man who holds the arrow starts off the moment the first runner reaches him and comes running to the arch. If he does not see the *śodhya* or sees only his head ( i. e. the back of the head ) when he reaches the arch the *śodhya* is to be declared innocent ; but if he sees other parts of the head ( such as the ear or nose &c. ) or if the *śodhya* floats to some part other than the one where he dived he is not innocent.

*Ordeal of poison.* After worshipping Maheśvara with incense<sup>590</sup> and the like ( mentioned above ) poison placed before the image of Maheśvara is to be administered in the presence of ( images of )

589. Several smṛtis give different mantras to be recited by the judge in invoking the waters ( so that there is an option ). Vide Viṇṇu Dh. S. XII. 7-8 ( tvamambhaḥ &c. ), Piṭāmaha ( toya tvam prāṇinām prāṇāḥ &c. ) quoted by the Mit. on Yāj. II. 108, Nār. IV. 316-317 ( asyāṅṛtavibhāgasya &c. ), Kālikāpurāṇa q. by V. P. p. 206. The mantra in Śaikhya-Likhita ( q. by Madanaratna and V. P. p. 206 ) was सद्सच्च त्वमेव वदन् । उग्रयोः प्रतिष्ठितस्त्वयि सार्वे सिद्धं देव वदन् । त्वमेव तद्ब्रूहि वरेण तदादिशस्व । The Ma of तदनस्व reads तदादिशस्व ।

590. It is most appropriate that Śiva is to be worshipped in the poison ordeal, since, according to the Paurāṇic mythology, he swallowed the Hala-hala poison produced at the churning of the sea. 960 *yavas* make one *palu*.

gods and brāhmanas. The poison to be selected is *śārṅga* (derived from the *śrṅga* plant) or *vatsanābha* (aconite) or *haimātula* (Viṣṇu Dh. S. XIII. 3, Nār. IV. 322 &c.). Pītāmaha (q. by Aparārka p. 712) treats the three as distinct, while Yāj. II. 111 appears to prescribe *śārṅga* growing on the Himālaya as the poison to be selected. Viṣṇu Dh. S. (XIII. 2-3) also does the same. In the rains the quantity of poison is to be six *yavas* in weight, in summer five, in hemanta (and *śiśira*) seven or eight and in *śarad* (autumn) less than the latter (i. e. six *yavas* acc. to Mit. and three acc. to V. Mayūkha). Poison is to be administered in the last watch of the night and never in the noon or afternoon or twilight; it was to be mixed with ghee thirty times as much. It may be administered to any one except a brāhmana. Viṣṇu Dh. S. XIII. 6-7 and Nār. IV. 325 are mantras with which the judge invokes poison and Yāj. II. 110 is the mantra which the *śodhya* repeats before taking poison viz. 'O poison! thou art the son of Brahma, thou art firm in the duty of (deciding) the truth. Save me from this accusation and be like nectar to me by truth (if I be innocent)'. Nār. IV. 326 states that then the *śodhya* should eat the poison, should be kept in shade without food and guarded the rest of the day and if he discloses no signs of the effect of poison should be declared innocent. If the dose of poison is large, the Mit. (on Yāj. II. 111) says that when the *śodhya* shows no change till five hundred clappings of hands then he should be declared to be innocent and medical treatment should be resorted to. Pītāmaha says that, in order to prevent fraud, for three or five nights before the ordeal the intending *śodhya* should be kept under the supervision of the king's servants and an examination should be made whether medicines, incantations or precious stones that are antidotes are secretly employed.

*The ordeal of koka.* The *śodhya* is made to worship the stern deities (such as Rudra, Durgā, Āditya) with sandal wood paste, flowers etc. and made to bathe the images with water. Then the judge asks the *śodhya* to invoke the consecrated water with the mantra '*satyama mūbhirakṣi*' (Yāj. II. 108) and makes him drink three handfuls (*prasthi*) of that water. Pītāmaha gives some special rules. The water may be that of the bath of the image of that god of which the *śodhya* is a devotee or if he holds all images in equal esteem, then of the Sun. In the case of Durgā it is her *spike* (*sāla*) that is to be bathed, the orb in the case of the Sun and the weapons in the case of other



gods. The water of the bath of Durgā is to be offered as ordeal to thieves and those who live by the profession of arms and the water of the bath of the Sun is not to be given to brāhmanas. In other divyas the result is declared immediately, but in the kosa ordeal there is a period of waiting which is more or less according to the value of the claim or the gravity of the offence. Acc. to Yaj. II. 113, Viṣṇu Dh. S. 14. 4-5, Nār. IV. 330, if within fourteen days of taking the kosa ordeal the śodhya does not suffer any serious calamity due to the king's action or the act of God or does not fall seriously ill or does not lose by death his son or wife or other dear relative or his wealth, then he is to be declared innocent. Insignificant loss or illness did not matter as it is unavoidable in this world. Besides, the calamity or illness must not be one common to several people (such as an epidemic). Drinking holy water (*koṭāpāna*) was employed not only as an ordeal for proving innocence, but it was resorted to also for assuring another about one's good will and future honesty (vide Rājat. V. 326).

*Ordeal of Tanḍula* (rice grains). It is to be administered in charges of theft or disputes about debts or other monetary matters. On the preceding day grains of rice should be made white (i. e. husked). The judge should perform all the rites on the previous day. The rice grains should be placed in an earthen vessel, exposed to the sun, water of the bath of (the image of) the sun should be poured over them in the vessel and the vessel should be kept in that state the whole night. The next day in the morning the śodhya should swallow thrice the rice grains. He should be made to spit on a *pippala* or birch leaf. If blood is found mixed in his saliva he should be declared guilty.

*Ordeal of taptamāṣa* (heated piece of gold). In a vessel of copper, iron or clay sixteen angulas in diameter and four angulas deep, the judge should get twenty palas of ghee and oil poured and heat it to the boiling point. Then the judge should cast into it a golden piece weighing one māṣaka (equal to five *guṭjās*). The śodhya should take out the heated golden piece with the thumb and the next two fingers. If he does not jerk his fingers or there is no scalded skin he should be declared to be innocent. There is another method. Cow's ghee should be poured in a vessel of gold, silver, copper, iron or clay and it should be heated to the boiling point so that when a green leaf is cast into it the sound '*churu*' is produced. Into the

boiling ghee he should cast a golden, silver, copper or iron seal ring once washed. Then he should invoke the ghee with this mantra 'O ghee! thou art the holiest thing in sacrifices, thou art nectar; burn him (the *sodhya*) if he is a sinner; be cool as ice if he be innocent.' Then the *sodhya* takes out the ring from the boiling ghee. If there are no marks of scalding on his forefinger he is innocent.

*Ordeal by phāṭa* (ploughshare). This is described by Bṛhaspati (S. B. E. vol. 33 p. 318 verse 28) quoted by the Sm. O. II. p. 119, V. P. p. 218 and others. A ploughshare of iron weighing twelve *palas*, eight angulas long and four broad should be made red-hot and the thief should be made to lick it once with his tongue. If he is not burnt he establishes his innocence; if otherwise, he is guilty. The Vyavahāratattva (p. 608) mentions that acc. to Mātthila writers the thief meant is a cattle-lifter. The ordeal mentioned in the Chāndogya Upaniṣad is a *phāṭa divya*.

*Ordeal of dharma* (i. e. of the images or pictures of Dharma). Men guilty of causing bodily injuries or who have monetary disputes or who desire to undergo this ordeal as an expiation for sins should undergo this. A silver image of Dharma and a leaden or iron one of Adharma should be prepared or the judge should draw on a birch leaf or a piece of cloth figures or pictures of Dharma and Adharma respectively white and dark in colour. Having sprinkled *pañcagavya* over the two, he should worship them with white and dark flowers respectively. The images or figures should then be placed in two balls of clay or cowdung. The two balls should be then placed inside a new earthen vessel in a cowdunged spot in the presence of images of gods and in the presence of brāhmanas. Then the judge should perform all the rites from the invocation of Dharma to the placing of the writing on the head. The *sodhya* should repeat the words 'if I am free from guilt may (the image or picture of) Dharma come to my hands'. Saying this he should take out one ball from the vessel. If he takes out Dharma he is innocent. This resembles the drawing of lots.

Ordeals played their part in the judicial systems of most ancient countries. In early England handling of red-hot iron and plunging the hand in boiling water were the commonest ordeals. In the ordeal of water sinking was a sign of innocence and floating of guilt. Stephens (History of Criminal Law of England, vol. 1 p. 73) suggests that the ordeal of water



was a form of honourable suicide. The Assize of Northampton (1176 A. D.) prescribed the ordeal of water for murder, robbery, theft, forgery and arson, but ordeals were abolished in England from 1215 A. D. (*ibid.* vol. I p. 300). In India<sup>591</sup> there is epigraphic and other evidence to show that ordeals were resorted to till the end of the 18th century and rarely even later. In the Kittur Pillar Inscription (J. B. B. R. A. S. vol. IX, pp. 307-309) dated in Kaliyuga era 4289 in the reign of Kadamba king Jayakesideva there is a description of the *phāladīnya* which was administered by mutual agreement on Sunday to an ācārya Śivasakti who had a dispute about a plot of land with Kalyāṇa-śakti the ācārya of another shrine and whose hand was examined the next day after he underwent the ordeal by all the bankers of the *agruhāra* village Degāva. In the Sillimpur stone slab Inscription of the time of Jayapaladeva (E. I. vol. XIII, p. 283 at p. 291-292) there is a reference to the ordeal of

591. In Beal's 'Buddhist Records of the Western world,' vol. 1, p. 84 (also Watters on Yuan Chwang's travels vol. 1, p. 172) four kinds of ordeals are mentioned as in vogue, viz. by water, fire, weight and poison. In the water ordeal the accused is placed in a sack connected with a stone vessel and thrown into deep water. If the man sinks and the stone floats he is guilty; if the man floats and the stone sinks then he is pronounced innocent. The ordeal by fire is: they heat a plate of iron and make the accused sit on it and again place his feet on it and apply it to the palms of his hands; moreover he is made to pass his tongue over it. If no scar results he is innocent; if there are scars his guilt is proved. In the ordeal by weight a man and a stone are placed evenly in a balance. If the accused is innocent the stone rises in the balance; if he is guilty the man rises and the stone falls. In the ordeal of poison an incision is made in the right thigh of a raso, all sorts of poison with a portion of the food of the accused are placed in the incised wound. If the man is guilty poison takes effect and the animal dies; if he is innocent the poison has no effect and the animal survives. It will be noticed that these descriptions of the four ordeals do not agree in several respects with the descriptions in the *smṛitis* and *digests*, while the poison ordeal in Beal has nothing in common with the *smṛiti* poison ordeal. Alberuni (tr. by Sachau, vol. II, pp. 159-160) probably speaks of poison ordeal in the words 'the accused person is invited to drink *bish* called *brāhmana*' (he is probably referring to poison being called the offspring of Brahman in Yāj. II. 110 and Nār. IV. 325). In the ordeal of water the accused is simply thrown into a deep and rapidly flowing river or a deep well and he was held innocent if he was not drowned. He describes the *koṣa* ordeal and balance ordeal accurately, but states that if the man has spoken the truth he weighs more than before. He describes correctly *taptamāṣa* (gold piece taken from boiling clarified butter) and also the ordeal of the red-hot iron piece.

balance<sup>592</sup> (about 1200 A. D.). The Visnukundin king Mādhavarman in the 7th century A. D. (Journal of Andhra Historical Research Society, vol. VI pp. 17, 20, 24) is said to have carried out various ordeals (*avanita-vividha-dhyanā*). The E. C. vol. III (Mandya Taluka Ins. No. 79 p. 47) records that a dispute having arisen about the boundaries of land bestowed by means of a copperplate grant by the Hoysala king Vira-Narasimhadeva, one Kannaya, a descendant of the original donee, performed an ordeal by holding consecrated food in the presence of the God Hoysalesvara in the capital Dorasamundra and came out successful. E. C. IV. p. 27 (Yelandur Jagir Ins. No. 2 page 27, about 1580 A. D.) is a charter to potters whose headmen underwent the ordeal of dipping their hands in boiling ghee as against barbers and washermen who denied that potters could pare their toe nails and tie on upper cloth (at the time of marriage). In the Indian Antiquary for 1931 (vol. 60 p. 179) an extract is cited from the Archaeological Report for Travancore 1930 which describes the balance ordeal undergone by a brahmana 18 years before and seen by the writer himself in the temple of Śiva at Calicut. For the ordeal of red-hot ploughshare in the case of thefts, vide Report of South Indian Epigraphy for 1907, para. 27.

In the times of the Maratha kings ordeals were resorted to. For example, in 'Peshwa's Diaries' vol. 2 p. 150 (in 1764-65 A. D.) mention is made of *taptakāñīka* ordeal (i. e. taking out a coin or ring or a piece of metal from a large vessel in which either water or oil or ghee had been brought to the boiling point) in which the person undergoing it had his right hand burnt up to the middle joints of the fingers and was declared to be false. In a Marathi publication called 'Vataupatrein, nivādapatrein &c.' pp. 46-56 edited by P. V. Mayjee and D. B. Parasnis (1909) there is a document which describes in great detail the ordeal of fire undergone in connection with a dispute about the office and emoluments of Deshpande in the district of Kalyan in *śake* 1666 Pauṣa bright 11th, Thursday (1745 A. D.). It is stated therein that the ordeal was performed on the bank of the sacred river Godāvāri at Kopargauṇ in accordance with Dharmasāstra in the presence of the Peshwa himself and learned brāhmanas and *paṇḍitas* near the temple of the god Śrī Śukleśvara, that as the opponent was long in

592. मन्दिपनिर्वर्तय दुरुषा कुर्वन्तोपि सद्वचनः । परम धर्मज्ञा नान्दीदनात्मिका  
दुष्काः E. I. vol. XII, at pp. 291-292.



possession the ordeal had to be performed by the man claiming title, that an iron ball of 50 palas (i. e. 165 tolas and two māṇṣas) was heated red-hot and the *śodhya* carried it across seven circles and threw it in the 8th circle on flour and bandies which began to burn, that his hands were examined in the presence of the opponent and the respectable people and were found unaffected and the opponent was made to pass a document of victory to the *śodhya* called '*ujjīlapatra*'. The description agrees very closely with that given above. In the same work at pp. 36-41 there is a remarkable description about an ordeal undergone (in 1742 A. D.) by Mahomedan litigants in their own mosque for 15 days by lighting lamps and sitting down in the shrine. There are several other *sakampatras* in the same work which refer to ordeals.

For an informing article on *divyas* reference may be made to Dr. Dines Chandra Sirkar's '*The successors*<sup>593</sup> of the Śāta-vāhanas' Appendix pp. 354-376 (Calcutta, 1939). He quotes therein a passage from the '*Asiatic Researches*' vol. 1, from which it appears that a magistrate named Ali Ibrahim Khan at Benares tried by *phāla divya* two cases in 1783 A. D. and reported them to the then Governor-General, Warren Hastings. In the '*Tṛtīya-sammelana-vṛtta*' (pp. 18-26) and in the *Caturtha-sammelana-vṛtta* pp. 100-154 of the *Bhārata-Itihāsa-saṁśodhaka-maṇḍala* at Poona (both in Marathi) Mr. Bhaskar Vaman Bhat contributes two thoughtful and scholarly papers on the administration of Justice in the times of the Marathas in which the part played by ordeals is described at some length.

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593. It is somewhat strange that Dr. Sirkar refers to '*Divyatattva of Bṛhaspati*' (in '*Successors of the Śātavāhanas*' Appendix p. 360). A *Divyatattva* of Raghunāṇḍana is well-known. A *Divyatattva* of Bṛhaspati has so far been mentioned nowhere.

## CHAPTER XV

### DECISION

The last (i. e. 4th) stage in a judicial proceeding is *siddhi* (Yaj. II. 8) or *nirṇaya* (decision). If *pratyākālita* (as defined above on p. 298) is regarded as a *pāda* of *vyavahāra* (and since all are agreed that there are only four *pādas*) then the decision is not a *pāda* of a lawsuit but is the fruit thereof (V. P. p. 86). When the evidence has been led, the king (or chief justice) should with the help of the *sahhyas* decide upon the success or failure of the plaintiff<sup>394</sup>. Nār. II. 42 says that the *sahhyas* should ask the parties to leave the court when they are considering their verdict or what decision was to be pronounced<sup>395</sup>. It is stated by Vyāsa and Śukra IV. 5. 271 that the decision of a case is based on eight sources<sup>396</sup> (& acc. to Śukra) viz. the three *pramāṇas* (possession, documents and witnesses), logical inference, the usages of the country, *śapathas* (oaths and ordeals), the king's edict and the admission of the litigants. Pītāmaka prescribes that, in disputes where there are no witnesses, no possession nor documents and no recourse can be had to divine proof, there the king is the final deciding factor as he is the lord of all<sup>397</sup>.

It is stated by Nārada II. 41 and 43 that, whether a party is defeated by his own admission or by his own conduct (i. e. because he adduces false witnesses or forged documents) or

394. 'उक्तनकाररूपेण स्वमतस्थापिता किंवा । राजा परितः सम्येव स्थाप्यो जप-पराजयो ॥ संवत्सर ॥' by स्मृतिच० II. 120, परा. मा. III. p. 199.

395. Dr. Jolly (S. B. E. vol. 33 p. 35) is not right when he translates Nār. II. 42 as 'whenever the false assertions have been removed the judges shall pass a decree'. He has not also correctly rendered the com. of Anahīya. There is no word for 'assertions' in Nār. II. 42 'यथास्तुत्याय तु सम्ये कार्यो निनिश्चयः सदा' on which the comment of Anahīya is: यदा निर्णयकारो भवति तद्वशात्वा वादिमतिसादिनाः परीः सर्वस्तथानुसम्बन्धमानतः सः हावत्पुस्तार्थं सम्ये निर्णयः कार्यः ।

396. 'प्रमाणैर्होतुं चरिते ज्ञापयेत् सुपाज्ञया । वादिसंमतिसया वा निर्णयोऽष्टविधः स्मृतः ॥ व्यास in परा. नि. p. 139; स्प. म. p. 86, शुक्रनीति IV. 5. 271 (reads बहुविधः स्मृतः). शुक्र apparently regards *pramāṇas* as one.

397. 'लेखं यत्र न विभोत न मुक्तिर्न च शक्तिः । न च विष्णवावतरोति प्रमाणे तत्र पाथिषः । निवेष्टुं नैव शक्याः स्तुर्वादाः कन्दिगधरुपिणः । तेषां कुपः प्रमाणं इत्येतत् सर्वस्तु मधुर्यतः ॥ नितामह ॥' by स्मृतिच० II. 26, परा. मा. III. p. 93, स्वधरारसार p. 43, मदनरत्न.



whether he is defeated after full trial and the adducing of proof, it is proper that the defeat should be declared by the *sabhyas* (the judges) and that a *Jajapatra* (a document of success i.e. a judgment) should be given to the successful party couched in fitting terms. Several verses of Nārada (quoted by Aparārka p. 684), Bṛhaspati (S. B. E. vol. 33 p. 307 verse 19), Kāt. (259-265), Vṛddha-Vasistha (q. by Mīl. on Yāj. II. 91 and Aparārka p. 684) and Vyāsa (Sm. U. II. p. 57) lay down the contents of the judgment<sup>298</sup>. It was to contain a brief statement of the plaint, the reply, the evidence, the depositions of witnesses, discussion thereof, arguments, the *smṛti* texts applicable, the opinion of the *sabhyas*, the decision and the relief granted, and should be signed by the chief justice and bear the royal seal. Vas. II. 10 refers to precedents also in the decision of cases and the awarding of punishments (*āgamād-dṛṣṭāntā-er*). The Mīl. quotes a *smṛti* text (on Yāj. II. 91) that other members of the assembly (who are not judges) proficient in *smṛti* may also sign the judgment to show that the decision is acceptable to them also. But this was not absolutely necessary, as is made clear by the Vivādacandra p. 146. Kāt. (356) applies the word *paścātkāra*<sup>299</sup> (refutation) to a judgment containing the above particulars given after a complete contest, while he restricts the word *jajapatra* to a document (given by the judge) when a plaintiff becomes what is called *hinaṁśī* (because he makes a change in his pleading or for similar cause) and when there has been no complete trial of an action; and such a document embodies only what happened. Kāt. (III. 19) appears to employ the word 'paścātkāra' in a somewhat different sense when he says 'the

298. सवले पूर्वपादं च सोचरे सकिपं तथा । सावधारणकं चैव तद्वैषम्यं जपयकम् ॥ भारद् (q. by अपरार्क p. 684); सवोपन्यस्तसाधारणसंज्ञकं संसर्गकिपम् । सावधारणकं चैव जपयकमिदमेतैः । यादृशिकाद्यादिहस्ताङ्गं सुदितं राजसूत्रम् । सिद्धेऽर्थे वादिने दृष्टान्तरिने जपयकम् ॥ वृद्धसहिते q. by मिता. on वा. II. 91 and अपरार्क p. 684; पूर्वोक्त-किमपादं समर्थं तत्परीक्षणम् । निमज्जं स्मृतिवैषम्यं च यथासम्भवं विनिश्चिन्तम् । एकसर्वे सम-सिन् जपयन्तेऽभिलेखयेत् ॥ व्यास q. by स्मृतिच. II. 37; पूर्वोक्तकिमपादं निर्विशालं यदा युजः । यथायाज्वायिने लेखये जपयन् बहुरपरे ॥ वृद्ध. q. by स्व. मा. p. 309; समस्तदुष्टं ये तत्र स्मृतिशास्त्रविदः सिद्धाः । यथा लेखयिषी महत् स्वदन्तं तत्र द्वापयेत् ॥ कात्या. (263) q. by स्मृतिच. II. p. 57, मिता. on वा. II. 91 (without name). 'जपयन्ते सम-पादविषयाकपूर्वाभिर्लक्षितेव प्रयोजिका न तु पात्रपादितस्वदन्तादि' सिद्धान्तम् p. 146. Compare Order 20 r. 4 of the Indian Civil Procedure code for the contents of the judgment.

299. विरक्षास्तु किं न च समाधेनेव वादिना । यथाकारो भवेत्तत्र न सर्वान् विधी-यते । अन्यथाद्यादिहीनेषु दुर्गमेषु वदीयते । इत्यधुनापूर्वसिद्धे तद्वै स्याज्जपयकम् ॥ कात्या. q. by स्मृतिच. II. 37-38, परा मा. III. 124-125, स्व. म. p. 146. For *hinaṁśī* vide above p. 303.

person, who, when charged with murder, does not reply to the charge that very day, stands refuted' (i. e. is found guilty)<sup>600</sup>. The Mit. (on Yaj. II. 91) differing from Kāt. holds a jayapatra to be a judgment giving a summary of the plaint, the reply, the evidence and the decision, while when a plaintiff is defended for change of pleading or for default of appearance or for non-prosecution the document stating this is called '*hīmapatruka*'. It is to be regretted that ancient jayapatras in Sanskrit have not yet been discovered. In 25 Calcutta Weekly Notes pp. CXLIH—III Dr. Jolly communicated the substance of a *jayapatra*, couched in ancient Javanese, engraved on a copper-plate found in the island of Java and described by Dr. Brandes in a Dutch paper. That judgment is dated *śaka* 849 (928 A. D.), relates to a dispute about a debt of one *suvarṇa* in which the plaintiff failed because he did not appear at the trial. At the end there are the signatures of four witnesses and the document is styled jayapatra at the end. Vide for the same jayapatra J. B. O. R. S. vol. VII pp. 117 ff. The late Mr. K. P. Jayaswal published in 24 Calcutta Weekly Notes (pp. CXLIX—CLVI) a *jayapatra* (text, translation and remarks) granted by the Hindu court of Mithila in *śaka* 1716 (1794 A. D.) and in J. B. O. R. S. vol. VI pp. 246—258, which strictly conforms to the rules of procedure laid down in the *smṛtis* and *nibandhas* and is couched in dignified, technical and scrupulously formal language. It related to the ownership of a slave girl. Plaintiff at first made default in appearance; the judgment notes this and also refers to the restoration of the suit. The defendant raised an objection that a single witness to prove a matter was inadmissible. This objection was upheld. Then plaintiff prayed that he might be allowed to undergo an ordeal, but this request was disallowed as human proof was possible and plaintiff ultimately lost his suit. The judgment is written and signed by one Sacalamiśra, who was the chief justice, and is addressed to other members of the *sabha*, called *dharmaādhyaṅgas* and *paṇḍitas*, seven of whom express their concurrence (*sammata*) at the top of the document. Vide Journal of the Bihar and Orissa Research Society vol. XXVIII for 1942 for nine Sanskrit jayapatras from the courts of Mithila in the 18th and 19th centuries.

The Mit. (on Yaj. II. 91), and V. Mātrkā p. 309 note that a jayapatra is given specially to prevent the same matter being



agitated again, while a document given where a party is hinavādi (i.e. a *hinapatra*) serves the purpose of making that party liable later on to pay a fine. When a dispute was decided by a domestic tribunal (*kula* &c.) there was no *jayapatra* but only a *nirṇaya-patra* (*kulādibhir nirṇaye jayapadrābhūcān-nirṇaya-patram tadra karyam paratapatramiti yūvat*, as the Vy. Nirṇaya p. 85 says). It would be better to adopt the reading '*ritupatram*' as given by one Ms.

The defeated party has to pay a fine to the king and the successful party was complimented (or honoured) by the king (or chief justice) and was to be put in possession of the matter that he succeeded in proving<sup>601</sup>. Manu VIII. 51 prescribes that in monetary matters (i.e. in civil disputes) the defeated party should be made by the king to pay the judgment debt to the successful party and also some fine to the king according to his ability, while Manu VIII. 139 lays down that when the defendant admits in the court his liability he has to pay to the king five per cent as fine and if the defendant denied his liability altogether and was proved to be false he had to pay as fine double of that (i.e. ten per cent). This is analogous to court fee, for which see above pp. 294-295. If one or both parties had laid down a stake or wager (viz. 'if I be defeated in this suit I shall pay a hundred panas') then he had to pay that stake to the king and a fine as above and the subject of dispute to the successful party (Yaj. II. 18 and Nār. II. 5)<sup>602</sup>; compare Visṇu Dh. S. V. 153-159 for similar rules. The punishments awarded in criminal matters will be discussed immediately below.

It would be necessary to see in what cases review of judgment was allowed. The general rule is stated by Manu IX. 233, 'whenever any legal proceeding has been completed (*tirita*) or has been carried out so far as to recover a fine from the defeated party, a wise king shall not annul it' (at his mere will or pleasure or through greed). The words '*tirita*' and

601. सिद्धेनार्थेन संबोधये वादी सत्कारपूर्वकम् । लेख्यं स्वदत्तसंयुक्तं तस्मै दद्यात् प्राधिकः च कस्यचिद् by स्मृतिच. II. p. 57, अपराके p. 694, स. नि. p. 220. The मदनमोहन (स्वय. ms.) explains 'सिद्धेनार्थेन साधितधनेन । लेख्यं जपयन् । साधितं धनं तद्विभक्तिसहितं दापनीयम् ।'

602. विषये सोत्तरपणे द्वयोर्वैतथ्यं द्वीपते । स एव हि धर्मे दायापो विनश्यच्च पराजये च । भारद् II. 5.

'anuṣiṣṭa' have been variously explained<sup>603</sup>. The word 'tīrta' is very ancient and occurs in the Delhi Pillar Edict IV of Aśoka (E. I. Vol. II. p. 253) as 'tīrta-dandānam' qualifying men imprisoned in jails. Medhātithi and Kullūka explain them as 'decided according to the rules of the śāstra' and 'taken so far as to recover fine from the unsuccessful party' respectively. Kāt. (495) defines them differently: "When a certain side is decided by the sabbhyas themselves (without the examination of witnesses) to be either true or false, it is said to be tīrta and that matter or side is called 'anuṣiṣṭa' which is declared (to be true or false) on the testimony of witnesses." The lexicon called *Vaijayanṭi* seems to have Kāt. in mind and defines 'tīrta' as a perverse decision given by the sabbhyas themselves and 'anuṣiṣṭa' occurs where the evidence of witnesses makes what is true appear as false (Bhūmikāṇḍa, *valākyādhyāya*, verses 11-12). Nār. II. 65 (S. B. E. vol 33 p. 22) employs the two words, which the Mīl. on Yaj. II. 306 respectively explains as (tīrta) 'decided by reliance on documents and witnesses but not carried so far as to recover a fine', and ('anuṣiṣṭa') as 'decided so far as to recover a fine from the defeated party'. Vide *Aparārka* p. 866 and V. P. p. 90 for explanations.

According to Kāt. quoted in the *Vyavahārasāra* (p. 101)<sup>604</sup> the decree should provide for the successful party receiving the interest on or accretions to the movable or immovable property placed (during the pendency of the suit) in the hands of a third party (as a sort of Receiver). Kāt. (477-480) points<sup>605</sup> out the various ways in which a decree may be executed. The king should make a brāhmaṇa debtor return the decretal debt

603. तीरितं समाहितं निर्णययन्तं प्रापयामि वाक् । ... अनुज्ञितं अधिपत्यधिपेनोक्ति कथितं जपयते सारोपितम् । स्व. प्र. p. 90; तीरितं समाप्तं अनुज्ञितं साक्षिभिरुक्तम् । दीपकालिका ms वा. II. 306; तीरितं समाहितं निर्णीतमिति वाक् । अनुज्ञितं साक्षिभिरुक्तम् । मदनरत्न (स्व. ms). सदेवामगृह्यं सम्यैस्तीरितं साक्षिणा इ चेत् । अनुज्ञितमप्येतेषां लेख्यं द्विष्ये तु द्वैविकम् । वैजयन्तीकोश.

604. अध्वर्यवस्योक्तिं द्वयं चत्वं वा वदित्वा वा स्थिरम् । पञ्चाशत्कोट्यं वाप्यं जपिते पञ्चसुतारम् । कामवा. in *Vyavahārasāra* p. 101. This is ascribed to *Varad* in *Stūṭi* ch. II, p. 120, and *mānvaran* which reads मध्ये वस्योक्तिं चत्वं जपिते जपयन्तम् and explains 'मध्ये वस्योक्तिं विवादकाले मध्वर्यवस्योक्तिम्'.

605. राजा तु स्वामिने विनं सः सन्नेनैव प्रदत्तयेत् । देवाचार्येण चान्येभ्यः दुष्टान् सर्वान् दत्तयेत् । विधिपते सुहृदं वापि सन्नेनैव प्रदत्तयेत् । वज्रिजः कर्षकाश्चापि शिल्पिनश्चावधीहृत्सुः । पशुदानांमते ब्रह्मणा स्वाधीनं कर्म कारयेत् । अज्ञातौ वधनागार्तं जेदरो ब्राह्मणादुते । कर्षकान् क्षत्रपिदुष्टान् च समीधानांस्तु दत्तयेत् । कामवा. v. by *mitra* on वा II. 40 and 26, *Aparārka* p. 645, *Stūṭi* ch. II, pp. 121, 124, *Vara. m.* III. 200 and 209.



to the judgment creditor by conciliatory words, should make other debtors return it according to the usage of the country and compel bad people to satisfy the decree by means of physical pain (i. e. imprisonment). The king should make a co-sharer or friend (of the successful party) pay the decretal debt by means of a ruse (i. e. by borrowing an ornament or the like from him on a festive occasion and handing it over to the creditor) and also make traders, husbandmen and artisans (to pay) in a similar way. On finding that the debtor is unable to return the debt in cash, the king should make the debtor, whether a *kṣatriya*, *vaiśya*, *śūdra* or husbandman, work (for the creditor). If he be unable to work the debtor should be sent to jail except when he is a *brāhmaṇa*. Mann also (IX. 229) says that if the members of the three varṇas other than *brāhmaṇa* are unable to pay the fine imposed by the king they should be made to work for the king, but a *brāhmaṇa* may be allowed to pay in easy and small instalments. If a *brāhmaṇa* debtor was unable to pay, nothing could be done for recovery of the decretal debt except taking a surety from him if any one cared to be one. In modern times also judgment debtors are liable to be arrested and detained in civil jail in execution of decrees under rules 55-58 of the Indian Civil Procedure code (except women in execution of a decree for the payment of money). If in ancient times state policy exempted *brāhmaṇas* from arrest and detention in a civil jail for monetary debts on spiritual grounds and on the ground of caste, in modern times the State in India exempts agriculturists from arrest or imprisonment in execution of a decree for money on economic grounds under certain legislative enactments like sec. 31 of the Deccan Agriculturists' Relief Act (Bombay Act XVII of 1879). As regards women also Kāt. (488-489) laid down certain prudent rules: "Women who are not <sup>488</sup> independent should not be arrested (for offences like adultery); it is the male who should be regarded as the offender; women should be punished by their lord (i. e. the person on whom they depend) but the king should take away for punishment the male offender. Even if a woman whose husband has gone abroad be consigned to jail she should be kept imprisoned only till he returns." The Sm. C. II. p. 323 explains that the first verse applies to a woman who can perform the

606. नराकृत्याः स्त्रियो दण्डाः दुर्मांसवापरादयः । यदुला शास्त्रोपासना राजा तु  
दुर्गते भवेत् ॥ दण्डितव्यमिति नारी यापिता यदपि ददे । तावता दण्डते दण्डात्वा वाप-  
रादयस्तः यतः ॥ कात्या, q. by *सुनिबन्ध* II. p. 323.

expiation for adultery and who is dependent and the adultery is not with a male of a lower caste.

Nār. (II. 40) lays down<sup>607</sup> a qualification that when a party has been defeated by his own conduct (i. e. by his demeanour or by his having adduced manifestly false witnesses or forged documents) there is to be no retrial or review of judgment, but where a man has lost his cause through (the dishonesty of) witnesses or the *sabhyas*, the cause may be tried anew. There are four exceptions to the finality of the judgments of the king's court. Where a litigant either through folly or insolence<sup>608</sup> thinks a decision to be wrong, he may be allowed a retrial, provided he agrees to pay double the fine inflicted on the losing party (Yaj. II. 306, Nār. I. 65, Kat. 496). Secondly, where the former judgment is obtained by fraud or force, it may be set aside (Yaj. II. 31)<sup>609</sup>. Thirdly, where the litigant was incompetent, i. e. was a woman or a minor or a lunatic or intoxicated, seriously ill or distressed by a calamity or where the proceeding was carried on by another on behalf of a litigant who did not appoint him or with whom he was not connected in any way or was held inside a house or outside a town or village (i. e. in a forest) or by an enemy, the decision may be set aside and a retrial ordered (Nār. I. 43 in S. B. E. vol. 33 p. 16, Yaj. II. 31-32). Fourthly, a king could set right a former decision of his predecessor which was unjust and arrived at through ignorance (Mit. on Yaj. II. 306)<sup>610</sup>.

Yaj. (II. 4 and 305) prescribes that legal proceedings that are suspected to have been wrongly decided by the *sabhyas* through partiality or greed or intimidation should again be tried by the king and if the suspicion turns out to be true he should levy from the *sabhyas* and the party who at first succeeded double the fine that is imposed on a defeated party. Nār. I. 66 (in S. B. E. vol. 33 p. 22) is similar. Manu IX. 331 (= Matsya 227, 158)

607. साक्षिसम्बाधनकालो ह्यथैव दर्शनं पुनः । स्वचर्चावसिष्ठानां तु नास्ति प्रीत्यर्थं विधिः ॥ नारदः II. 40.

608. तस्मिन् वास्तुस्थितं वा को मन्दैव विधर्मतः । द्विद्वयं दण्डमास्तथा तस्मात् पुनः कञ्चरेत् ॥ नारदः I. 65 । कुलादिभिर्निमित्तेषु सत्योर्ध्वं न मन्वते यः । विचार्य सङ्कटं राजा कुकृतं पुनः कञ्चरेत् ॥ बृहत् and नारदाः q. by var. v. p. 21.

609. यतोपदिभिर्निर्जुसाव उपहाराच्चिर्नयेत् । वाङ्. II. 31.

610. न्यायार्थेन यद्वन्देव राजाज्ञानकृतं भवेत् । तद्वन्दमावाचयितुं पुनश्च विधिः कञ्चरेत् ॥ बृहत् q. by Mit. on var. II. 306, दत्त. भा. III. p. 582. This is नारदः, यस्मिन्क 2.



and 234 prescribe that when officers appointed to administer justice cause loss to litigants by taking bribes, the king should deprive them of all their wealth and when the *amātyas* (ministers) or chief justice disposes of a matter wrongly (but without being bribed), the king should himself decide the matter correctly and should impose on the *amātyas* or chief justice a fine of 1000 *pasas*.

Though there is hardly any express *smṛiti* text for the transfer of cases from one court or judge to another court or judge, in practice this must have been done, though rarely. In "Selections from Peshwa's Daftar" vol. 43 p. 108 there is a letter (of 12-8-1764 A. D.) written by the renowned minister Nana Phadnis to the Peshwa Madhavrao in which the former endeavours to persuade the latter to cancel his order for transfer of a case from the court of Rāmāstrī, famed for his impartiality and strict life, to another judge on the ground that one of the litigants was afraid that Rāmāstrī showed some partiality to the other litigant. Manu (VIII 174-175) states that the king who decides the causes of people unjustly through greed is soon subjugated by his enemies, while the king who curbing his own temper and desires impartially decides causes according to the dictates of śāstra becomes of one mind with his subjects as rivers merge in the ocean. Br. and Nar. I. 74 (S. B. E. vol. 33 p. 24) lay emphasis on both the secular and spiritual effects of doing even justice, saying that when the king gives decisions according to śāstra he spreads his fame in this world and secures Heaven<sup>611</sup>.

A crime may be defined as an act or omission that breaks the law and is subject to public punishment. But all kinds of breaches of the law do not result in punishment; only some do. Those breaches are crimes which are deemed to be menaces to the conditions of existence of society, which society, the ruler or legislation recognises as preventible only through punishment. The menace is not that of the specific action, but the abstract menace inherent in that type of action. A breach that is held to be a crime at one time may even be held not to be a crime at another time or in another country. For example, adultery is a crime under the Indian Penal Code (sec. 497), while it is not a crime but a civil wrong in English Law.

611. एवं राज्ञोऽस्मिन् राज्ञा कुर्वन्निर्णयसमम् । विराट् पश्य पश्य लोके महेन्द्रसचिवो भवेत् । साक्षिदेववातुमानेन यजुर्नकारनिर्णयम् । विराट् पश्य पश्य राज्ञा यजुस्तपोति विद्व-  
वम् ॥ इदम् प. ५४ स्मृतिच० II p. 123. वरा. ना. III. p. 219.

Many crimes and wrongs were sins and entailed secular punishments and also religious sanctions (viz expiations, *prāyścittas*). Vide Manu IX. 236, 240, Br. (S. B. E. vol. 33, p. 362, verse 22) and Patñjalini quoted below<sup>612</sup>. Maine in his 'Ancient Law' chap. X (3rd ed. of 1866) examines ancient western systems like those of Greece and Rome and makes the generalisation (p. 370) that the 'penal law of ancient communities is not the law of crimes; it is the law of wrongs or, to use the English technical word, of Torts. The person injured proceeds against the wrong-doer by an ordinary civil action and recovers compensation in the shape of money damages if he succeeds'. Dr. Priya Nath Sen in his Tagore Law Lectures on 'Hindu Jurisprudence' (1918, Lecture XII) rightly points out that this generalisation is not applicable to Ancient Hindu Law. It has already been shown (on pp. 264-266) that the king could of his own motion take cognisance of many wrongs called *chālas*, *pāṭas* and *aparādhas* and it is clear that in such crimes as theft, assault, adultery, rape, and manslaughter the smṛti texts do not prescribe only a money compensation to the person wronged, but corporal punishment in the first instance and monetary compensation in addition. Vide for example, Manu VIII 287, Yāj. II. 222, Br. (SBE vol. 33 p. 358 verses 9-10), Kat. (787) which prescribe a punishment for causing pain to the body or the loss of a limb and also the expenses of curing the person injured and some *śatium* to him.<sup>613</sup> Ap. Dh. S. (I. 9. 24. 1 and 4) lays down that the slayer of a ksatriya should give a thousand cows in order to remove the enmity (i. e. as compensation to relatives) and one bull in addition for expiation.<sup>614</sup> The Chāndogya Upaniṣad quoted above (p. 362) shows that a thief was punished with death in those early days. There is a passage in the Tai. S. II.

612. अकार्यकारिणामेषां पापविषये तु कल्पयेत् । यथाग्रवपयसुखं च दुष्टं चैषां प्रकल्पयेत् । पैटीनिसि q. by दुष्टविवेक p. 76.

613. वेहेन्द्रियविनाशे तु दया दुष्टं प्रकल्पयेत् । तया तुष्टिकरं देवं समुप्यासे च पश्चिन्ते । ननुप्यामप्यर्थं चासौ दयादात्मनिरौपमात् । कात्या. q. by स्मृतिसू. II. p. 329, अथर्वक. p. 416, परा ना. III. pp. 419-420; दुष्टसमिहनायैव दुष्टनारायणकल्पितः । हुते नदुहित्वं चान्यद्वाजदुष्टस्ततोऽपिनाः । बृह. q. by विश्वख्य on या. II. 226.

614. अग्निदेहत्वा यथा सहस्रं वैष्णवनाथे दयात् । ... अपनथापयित्वा सर्वत्र पादविचार्यः । आप. छ. सू. I. 9. 24. 1 and 4. हरदत्त in order to bring Ap. in line with Manu XI. 127 and Yāj. III. 266 explains that 1000 cows and one bull are all for expiation.



6. 10. 1 (quoted in H. of Dh. vol. II p. 151 n. 346) which states, 'He who threatens a brāhmana should be made to pay a hundred, he who strikes a brāhmana should be made to pay a thousand'. It is rather doubtful whether the figures stated are fines or are meant as *solutio* to the wronged. In Rg. II. 32. 4 (which also occurs in Tai. S. III. 3. 11. 5) the poet prays to Rāka<sup>613</sup> (the Full Moon personified) that she may be pleased to grant the boon of a valiant son, who would be 'śatadāya'. Sayana's rendering of this word as 'possessed of plentiful heritage or wealth' appears to be the right one. The words 'śatadāyam viram' in the Tai. S. III. 3. 11. 5 are translated by Prof. Keith as 'a hero whose *vergild* is a hundred'. This is incorrect, confounding as it does the ideas of western Germanic tribes with the Rgveda composed several millenniums earlier. It would be a strange thing to pray to a goddess for a son and at the same time to have in mind or refer to the price set upon him if he happened to be killed.

The ancient smṛti writers were quite aware of the several purposes served by punishments for crimes,<sup>614</sup> though they do not develop a regular science of penology. The person wronged feels a great urge for revenge or retaliation and other men sympathise with that emotion. The individual, however, could not, in civilized societies, take the law into his own hands and therefore the State saw to it that the emotion for retaliation or revenge was to some degree satisfied by the adequate punishment of the wrongdoer. Yāj. II. 16 and Nār. I. 46 (SBE vol. 33 p. 17) state that when a person without complaining to the king sets about to secure what is denied by the opposite side or is doubtful he becomes liable to punishment and he also cannot secure the object he wants.<sup>615</sup> In all ancient societies the *lex talionis* (the law of retaliation, viz. an eye for an eye,

613. राकानहं सुमनां सुदुती हुने ... ददातु वीरं शतदायसुखधनम् ॥ ऋ. II. 32. 4.

614. The work of Harry Elmer Barnes on 'The Study of punishment' (1930, New York) may be read with great interest and profit. It will set off to great advantage the comparatively humane treatment of criminals in Ancient India as compared with the horrible and revolting methods for punishing criminals employed in the West.

615a. अनायेष्ट तु को राज्ञे सन्निवायेऽर्थं यतते । असह्य स विनेयः स्वार्थस्य चारुवाधो  
न सिध्यति ॥ नारद I. 46.

a tooth for a tooth) prevailed.<sup>617</sup> *Manu* VIII. 280 (which is almost the same as *Nār.*, *pārusya*, verse 25), *Yāj.* II. 215, *Viṣṇu Dh.* S. V. 19 and *Śāṅkha-Likṣita* prescribe that with whatever limb<sup>618</sup> a man of low caste offends against a brāhmana, that very limb of his shall be cut off. Another and the most important purpose of punishment is deterrent. Punishment of the evil-doer serves as an example and a warning to all others that might be tempted to tread the paths of violence and crime. This aspect of punishment (*daṇḍa*) has already been dwelt upon in the section on *rājadharmā* (p. 21). The end sought to be served by punishment was the protection of society and the securing of its happiness. The *Śāntiparva* (15.5-6) remarks that people do not commit sins through fear of punishment at the hands of the king, through fear of Yama and of the next world and through fear of others (i. e. public opinion).<sup>619</sup> *Gaut.* XI. 28 derives the word *daṇḍa* from the root *dam* to restrain or to deter. This purpose of punishment is well brought out in the *Mṛcchakatika* (X) when the sentence passed on Cārudatta for the alleged murder of Vasantasena is proclaimed to the citizens by the executioners.<sup>620</sup> Another purpose of punishment is preventive i. e. if a culprit is imprisoned for an offence he is prevented or disabled from repeating the same offence or

617. Vide *Deut.* XIX. 21, *Lev.* XXIV. 20 for the ancient Hebrew Code (eye for eye &c.), the code of *Hammurabi* (about 2200 B. C.) in *Babylon* and the law of the Twelve Tables in *Rome*. In the 8th Table in *Oriolan's 'History of Roman Law'* (tr. by Pritchard and Naumy, 1871) p. 114 the 2nd provision is: 'retaliation against him who breaks the limb of another and does not offer compensation'. In *Hammurabi's Code* (text tr. by C. H. W. Johns, 1903) sections 196 and 200 are: 'If a man has caused the loss of a gentleman's eye, his eye one shall cause to be lost. If a man has made the tooth of a man that is his equal to fall, one shall make his tooth to fall out'.

618. येन येनाङ्गनाशपरार्थं कुर्वाणस्तद्वश्य ऋतेत्यममवयव आङ्गनाश । सङ्कलितं च. in *श्व. न.* p. 242; येनाङ्गनाशपरार्थो आङ्गनाशपरार्थस्तुवात् । तदङ्गं तस्य ऋतेत्यममेवं सङ्कलितं नवानुवात् ॥ नारद् (पादपद 23); इतिवर्णोऽधिकवर्णस्य येनाङ्गनाशपरार्थं कुर्वाणस्तद्वश्य आतमेत् । *विष्णुधर्मसूत्र* V. 19.

619. राजदण्डमपादेके पापाः पापं न कुर्वते । यमदण्डमपादेके परलोकमपादयति । परस्परमपादेके पापाः पापं न कुर्वते । ... दण्डरूपेण भवादिते मनुष्या वर्त्मनि स्थिताः ॥ शान्ति 15. 5-6; Vide *मत्स्य* for almost the same words (225. 16-17).

620. शत्रुयुद्ध आर्याः शत्रुतः । एष ... आर्यजातदुष्टो नाम । एतेन ... वसन्तमेवा मारिताः । ... तदा राजा पादकेन वधमाज्जतः एतं मारायितुम् । एषपर ईदृशस्तुमपलोकविकल्पनकारि करोति नमसि राजा पादक एवमेव शान्ति । *सूक्तकविक* X after verse 11.



committing further offences for some time at least and if he be sentenced to death or transported for life or banished, the commission of offences by him is prevented for his life-time. Another purpose was that of reform or redemption of the evildoer. The punishment was deemed to be a sort of expiation, which purged the man of sinful promptings and reformed his character. Manu VIII 318 ( = Vas. 19. 45 ) states that men who are guilty of crimes and have been punished by the king go to heaven, becoming pure like those who perform meritorious deeds. Medhātithi remarks on this verse that this applies only where the punishment is corporal and not merely monetary. It will be seen from the early sūtras like that of Gautama and from the Manusmṛiti that the more ancient criminal law in India was very severe and drastic, but that from the times of Yājñavalkya, Nār. and Br. the rigour of punishments was lessened and softened and fines came to be the ordinary punishments for many crimes, as is noted by Fa Hien ( 399-400 A.D. ) in relation to middle India (*Madhyadeśa*) under the Guptas apparently: 'The king governs without decapitation or other corporal punishments. Criminals are simply fined, lightly or heavily according to the circumstances. Even in circumstances of repeated attempts at wicked rebellion they only have their right hands cut off' ( Legge, 1886 p. 43 ). This may be contrasted with the state of things depicted by Megasthenes 700 years earlier than Fa Hien: ( Fragment XXVII p. 71 ) ' a person bearing false witness suffers mutilation of his extremities. He who maims anyone not only suffers loss of the same limb but his hand also is cut off. If he causes an artisan to lose his hand and eye he is put to death'. The *Dasakumāracarita* ( II. p. 56 ) states that the Mauryas conferred a boon on traders that for certain offences they were not to be sentenced to death, but were to be deprived of all their wealth and banished. The first separate Rock Edict of Aśoka at Dhauḷi ( *Corpus I L* pp. 93, 97 ) shows that great Emperor's anxiety that his judicial officers should strive to see that there is no undeserved fettering or no undeserved harsh treatment. In India the list of capital offences at any time was much shorter than in the West. Stephens is constrained to admit that in England 'there can be no doubt that the legislation of the 18th century in criminal matters was severe to the highest degree and destitute of any sort of principle or system' ( *Hist. of Cr. Law*, vol. I p. 471 ). As stated by Dr. Hart ( in ' *Way to justice* ' p. 94 ), at the beginning of the 19th century in England more than a hundred offences were

punishable by death. In 1832 a child was convicted at Ludgate Hill for stealing a box of paints worth two pence, was tried at the Old Bailey and hanged (vide 'In the service of youth', by Dr. J. M. Brew, 1943 chap. XV. p. 208).

Manu VIII. 129, Yaj. I. 367 and Br. (S. B. E. 33 p. 387 verse 5), Vṛddha-Hārta (7.195) speak of four methods of punishment ( *daṇḍa* ) viz. by gentle admonition, by severe reproof, by fine and by corporal punishment and declare that these punishments may be inflicted separately or together according to the nature of the offence.<sup>621</sup> The first takes the form of saying 'you have not done a proper thing', the 2nd 'lie upon you who are a wrongdoer and guilty of *adharma*'. Br. lays down that preceptors, *guroḥitas* and sons should be sentenced to the punishment of wordy admonition, other persons who engage in disputes should be punished with reproof or fines and those guilty of *mahāpātakas* should be punished with corporal punishment. That admonition and reproof were two modes of punishment shows that ancient writers were alive to the notion that among very sensitive persons or in a very sensitive society verbal condemnation would be enough to achieve the main purposes of punishment. Br. (SBE vol. 33, p. 388 verse 8) states that the first two are within the privilege of the *brāhmana* (appointed as chief justice) but fines and corporal punishment are to be inflicted by the king (on the recommendation of the chief justice, *prūḍhāvākamata sthitaḥ*). The *Mṛcchakaṭika* (IX) bears this out when the judge says 'We have authority only to pronounce the judgment; as to the rest the king is the final authority' ( *nirṇaye vyaṣaḥ pramāṇyaḥ śeṣe tu rājā* ). Gaut. XII. 51, Vas. 19. 9, Manu VII. 16, VIII. 126 and Yaj. I. 368 (= Vṛddha-Hārta VII. 195-196), Bṛhat Parāśara p. 284, Kauṭ. IV. 10 lay down that the award of punishment must be regulated by a consideration of the motive and nature of the offence, the time and place, the strength, age, conduct (or duties), learning and monetary position of the offender and by the

621. The *Dandaśiveka* of Vardhamāna (published in Galkwad Oriental series, 1931) deals exhaustively with the subject of punishments. *मन्त्रवेदं सम्पदं कृतमिति विद्वा, विद्वा एव दण्डादिसमर्थकारिमिति निर्मलतम् । दण्डशिवेक* p. 20; these are respectively *मन्त्रवेद* and *विद्वा*. *दण्डमुदेदितान्दुःखान्मायुःकेन दण्डयेत् । विवादिनां नराध्यान्वामिदुःखान्मां च दण्डयेत् । महापतकमुक्तांश्च न च दण्डेन दण्डयेत् ।* इह. g. by *सुतिस*. II. p. 126 and *श्व. नि.* p. 328.



fact whether the offence<sup>622</sup> is repeated. This provision means that the dharmaśāstras did not hold that the same punishment must be meted out for the same offence irrespective of the antecedents, characteristics or physical and mental condition of the offender. They always took extenuating circumstances into account. Kaut. (I 4), differing from the view of the ācāryas that there is nothing like *danda* for bringing under one's complete control all beings, gives his own opinion that, as a king whose control and punishments are most severe makes the subjects disgusted with him and as the king who deals mild punishments is disregarded by the people, the king should distribute punishments according to the deserts of the offenders and would then command respect.<sup>623</sup> One reason why some of the works on dharmaśāstra prescribe mild punishments is the doctrine of *karmavipāka* (a man committing certain sins is born in the next life afflicted with certain diseases or bodily deficiencies or is born as a low or filthy beast or bird). Vide Manu XI 49-52, Yaj. III 207-216, Viṣṇu Dh. 8. 44-45. This doctrine will be dealt with later on under *pātaka* and *prājāśaita*. Gaut. XII 48 first provides that the king must take into account, when awarding punishment to the criminal, his physical or monetary circumstances, the nature of the crime, the fact of repetition of the crime and then adds that the king should award punishment after consulting an assembly of learned brāhmaṇas. The *Dandaviveka* (p. 36) quotes a verse in which the considerations that should weigh in awarding punishment are brought together viz. the offender's caste (as in Manu VIII 337-338 for theft), the value of the thing, the extent or measure (as in Manu VIII 320), use or usefulness of the thing with regard to which an offence is committed (as in Manu VIII 285), the person against whom an offence is committed (such as an idol or temple or king or brāhmaṇa), age, ability (to pay),

622. दुर्धर्मापराधे च कारणे सुकृतावयव । अनुबन्धे तद्वत्त्वे च देशकालौ समीक्ष्य च । उक्तमाश्रयत्वेन मदेष्टा दण्डकर्मणि । राज्ञश्च मनुजीनां च कल्पयद्वृत्तरान्वितः । की. IV. 10; दण्डस्तु देशकालधर्मवर्षाधिकारयामविशेषैर्हि साकोशयोः कल्पयः । समिह 19. 9; सुकृतावयववरापातुवन्धविज्ञानादुद्वहनिधोमः । अनुज्ञाने वा वेदभित्तनवायवचनात् । मो. XII. 48-49; अनुबन्धे परिज्ञाय देशकालौ च तत्त्वतः । नारायणाधी चालीयवदण्डं दण्डयेयु पातयेत् । मनु 8. 126, on which मेधातिथि makes the striking remark that this is the fundamental verse about all offences 'उक्तानुकृष्टेष्वेवराधेदु मातृकाश्लोकोवय । एतद्वर्षाद्विसारेण सर्वदण्डवृत्तः तिः कर्तव्याः ।'

623. न श्रेयविधे वशोपनयनमस्ति धृताम् । यथा दण्ड इत्याचार्याः । नेति कीदृश्वः । शिशवद्वन्द्वे हि धृतानाद्येहेजनीयः । सुदुदण्डः परिरुच्यते । यथार्थदण्डः पूज्यः । सुविज्ञातवनीति हि दण्डः वसा धर्मोपज्ञासौजवति । अर्थज्ञास 1. 4. Vide Manu VII. 103 (= Śānti 140. 8) which appears to be of the same opinion as the ācāryas.

qualities, time, place, the nature of the offence (whether it is repeated or is a first offence). The *Rājatarāṅginī* (VIII 158) provides that in disputes where parties are in doubt as to their rights it is proper to award punishment with forbearance but where a man starts on an evil path of set purpose (the king and officers) must award severe punishment. In modern times there are controversies among several schools of criminology. Some hold that every man has freedom to act criminally or not or to act in the way he does and that each man has complete moral responsibility for his own acts. On the other hand there are some who go to the other extreme and propound that a so-called criminal act is mostly due to biological, physiological, pathological or sociological conditions, to the upbringing and environment of the person charged with crime. They favour determinism. The ancient Indian writers do not enter into these speculations. But when they said that regard must be paid to time and place and other considerations they were faintly conscious of or were groping towards the ideas of the 2nd school.

Fines are either fixed or not fixed (i. e. variable). They range from a *kāḍhī* to the confiscation of all wealth; fixed fines were of three kinds called *prathama sāhasa*, *madhyama sāhasa* (middling amercement) and *uttama sāhasa* (highest). These are variously defined. According to *Śaṅkha-Likhita* the first<sup>624</sup> amercement is fine from 24 paṇas to 91, the middling one is from 200 to 500 paṇas and the highest is from six hundred to 1000

624. बहुविधविधिकनवतिः पथमसाहसः । द्विपञ्च पञ्चशतं चैव मध्यमसाहसः । त्रयशतं चोत्तमः । यथासारायकारम् । ब्रह्मलिखितं q. by Vi. I. p. 664. दृग्भाषिक p. 23.

There was great divergence of views about the metal in which the fines were to be paid. According to *Vijñāneśvara* the figures of fines in such verses as *Mānū* VIII. 375 (where no metal is specified) the paṇas are those of copper, while according to *Bhāruchi* (quoted in S. V. p. 130) they are of gold. The S. V. remarks that local usage is to be followed. The V. *Mayūkha* (p. 235) states that in all texts (about fines) the mention of a number without specifying the object to which it refers is to be deemed to refer to paṇas, that paṇa is a copper piece one *śarva* in weight and that *kāpa* is one fourth of a pala. Br. (q. by Sm. C. II. p. 99) states that the tables in *Mānū* (VIII. 132-136) beginning with the dust particle in a beam and ending with *kāpāpana* is to be followed in ordeals and fines. An interesting sidelight is shed on crimes and their punishments in the Inscription of *Cālukya Vikramāditya V* (dated *śaka* 934) from *Gadag* which provides that the fines for abuse, assault, for drawing out a dagger, for stabbing and for adultery by a bachelor were respectively 2 paṇas, 12 paṇas, 3 *gadyāṇas*, 12 *gadyāṇas* and 3 *gadyāṇas* (vide E. I. vol. 20 p. 64.)



in proportion to the value of the matter in dispute or the injury caused. *Manu* VIII. 138 (= *Viṣṇu Dh. S.* IV. 10) states that the first, middling and highest fines are respectively 250, 500 and 1000 panas, while *Yāj.* I. 366 puts these respectively at 270, 540 and 1080. The *Mit.* explains that the lesser figures of *Manu* represent the fines to be awarded for offences committed without set purpose. *Nār.* (*sāhasa*, verses 7-8) prescribes that 100 panas is the lowest limit of fines for the lowest kind of *sāhasa*, 500 is the lowest for middling *sāhasa*, 1000 is the lowest fine in what is called the highest amercement (and might include death penalty, forfeiture of all property, banishment, branding and cutting off of a limb). Fines were supposed to be lesser than corporal punishment. *Kat.* (490-493) lays<sup>625</sup> down the following rules: Whatever figure of fine is prescribed in the *śruti* texts for a wrong it is to be paid to the king in panas of copper or their equivalent. Where the fine is said to be one-fourth or one half of a *māsa*, there it is a golden *māsa* that is meant; when the fine is declared in *māsas*, they are to be understood as those of silver and where the fine is declared in *kṛpālas* the same is to be understood; a *māsa* is 1/4th of a *karṣāpāṇa*.<sup>626</sup> The general rule that lesser punishment is to be inflicted on women is stated by *Kat.* (487).<sup>627</sup> In the case of all offences, women are to suffer half of the fine in money which is prescribed for a male offender (of the same kind) and when the punishment is death for a male, the punishment for a woman would be the excision of a limb.<sup>628</sup> *Kant.* (III 3) provides: 'a woman attains ability to enter into transactions on completion of 12 years and men when they are 16; if they disobey after that (i.e. after attaining majority) the woman shall be fined twelve panas and a man twice that amount.'<sup>629</sup> *Angiras* quoted by the *Mit.* (on *Yāj.*

625. कश्चिदेव वचनं यो दण्डस्तत्प्राप्तयेव धनमन्तः । यजमानो वचनं तु स्वात्मन्युत्तरं काय राजनि ॥ माषपादौ क्षिपादौ वा दण्डो यत्र दयतिः । अनिर्दिष्टं तु सौवर्णं माषकं तत्र कर्तव्यम् । यत्रोक्तो माषकैर्दण्डो राजतं तत्र निर्दिष्टम् । दण्डस्तैश्चोक्तमेव स्वायत्तदण्डविनिश्चयः ॥ माषो विंशतिभागस्तु क्षयः काषोपपन्नस्तु ॥ काशपा. 490-493 q. by सूत्रिच. II, p. 127, दण्डविनिश्चयः p. 29-30 (there are various readings in all these). The *मय. वि.* p. 202 says: धर्मशास्त्रेण दण्डविधानादौ संख्यामायं निर्दिष्टं यजमानो अपहाराद्यन्तर्वा वलसत्त्वात् संख्येयतया यजेत तत्र पणा एक दण्डस्त इति ।

626. सर्वेषु चतुराधेषु पुंसो दोषैर्दण्डः स्त्रुतः । तदर्थं योविदो दण्डरूपे पुंसोद्वर्जनम् । काशपा. (487) q. by सूत्रिच. II, p. 321, म. म. p. 246.

627. द्वापद्वयवर्षा स्त्री माषद्वयवहास भवति योद्वयवर्षाः पुमान् । अत उक्तमनुसूतायां द्वा- दशपणाः क्षिपा दण्डः पुंसो द्विगुणः । की. III. 3.

III. 243) states that<sup>628</sup> an old man over eighty, a boy below sixteen, women and persons suffering from diseases are to be given half *prāyaścitta* and Sankha quoted by the Mit. (on the same verse) that a child less than five commits no crime nor sin by any act and is not to suffer any punishment nor to undergo a *prāyaścitta*<sup>629</sup>. Under the Indian Penal Code, sec. 82, nothing is an offence which is done by a child under seven years of age. The severity of punishment depended on caste also. In the case of theft, Gaut. XII. 15-16, Manu VIII. 338-39 prescribe that a *vaśya*, a *ksatriya* and a *brāhmaṇa* should respectively be fined twice, four times and eight times of the fine to be imposed upon a *sūdra* for a theft, since each of these is deemed more and more aware of the heinousness of the crime. Kāt. (485) and Vyāsa state this as a general rule for all offences<sup>630</sup>. In the case of abuse and defamation the scales are turned in favour of the higher castes as regards fines. Gaut. XII. 1, 8-12, Manu VIII. 267-268 (= Nār. pāruṣya 15-16), Yaj. II. 206-207 prescribe that a *ksatriya* or a *vaśya* or a *sūdra* abusing or defaming a *brāhmaṇa* was to be respectively punished with the fine of 100 *panas*, 150 *panas* and with corporal punishment (cutting off the tongue), while a *brāhmaṇa* defaming a *ksatriya*, *vaśya* or *sūdra* was to be fined 50, 25 or 12 *panas* respectively (nothing in the last case acc. to Gaut. XII. 13). In the case of adultery and rape the caste of the offender and of the woman concerned made great difference in the punishment awarded. For adultery with a woman of the same caste Yaj. II. 286 prescribed the highest amercement, the middling one when the paramour was of a higher caste, but if the male be of a lower caste than the woman, the male offender was sentenced to death and the woman had her ears cut off. Corporal punishment assumes (as pointed out by the Dapdaviṛeka p. 20) various forms according as it is meant to cause only harassment (*pāṇa*) or is

628. अशीतिवर्षं वर्षानि बालो वाच्यमवोदयः । यापयित्वाधर्मदोषेति सिद्धे प्रापित एव च । अनीतादृशवर्षं पञ्चषष्टिरस्य च । चरेद्दुष्टाः सुहृन्वा नापयितुं विमुक्तये ॥ अनी बालवत्समाप्य नापराधी न पण्यम् । राजद्वन्द्वो न हस्वामिन् प्रापयितुं न सिद्धे ॥ q. by हरद्वन्द्व on Mō. II. 6 (without name). The *sikṣa* on Mā. III. 243 ascribes the first to अशिरद्वन्द्व and the last two to शङ्ख.

629. Nār. IV. 85 holds that a boy is called *śiṣu* and is like an embryo till eight and *bāla* of *poṇanda* thereafter till 16.

630. येन द्वायेकं सूत्रम् दण्डो भवति धर्मतः । तेन केवलकलियाणां द्विगुणो द्विगुणो भवेत् ॥ अतएव 485 q. by सुमित्रः II. 127, वरा. मा. III. 211 (ascribes to विजयम्); नापयितुं च दण्डं च शीघ्रं बालो पण्यकम् । कल्पसूत्रद्वन्द्वद्वन्द्वे सर्वे कर्षेधर्मेधमम् । वास q. by विश्वकल on वा. I. 17.



carried out by cutting off (or destroying) a limb or to cause death. Harassment or pain may be inflicted by imprisonment, beating, putting fetters, by making ridiculous (by the complete shaving of the head, declaring the offence by beat of drum in the presence of the convict, parading him through the streets on an ass) and marking him with signs indicative of offences like theft. Manu (VIII. 125) provides that punishment may fall upon any one (or more) of ten places in the case of the three higher castes, viz. the private parts, the belly, the tongue (either whole or half), the hands, the feet, the eyes, the nose, the ears, wealth and the whole body; but a brāhmana shall depart unhurt from the country (i. e. he is to be only banished). Br. (SBE. 33 p. 388 verses 9-10) speaks of fourteen places of punishment adding the neck, the thumb and index, the forehead, the lips, the hind part, hips, one half of the feet (to Manu's ten) and omitting wealth and the whole body therefrom. Gaut. XII. 43, Kauṭ. IV. 8, Manu (VIII. 125, 380-381), Yaj. II. 270, Nār. (sāhasa, 9-10), Viṣṇu V. 1-8, Br. (SBE. vol. 33 p. 388 verse 11), Vṛddha-Hārta VII. 191 prescribe that a brāhmana was not to be sentenced to death or corporal punishment for any offence whatever, but if he were guilty of an offence deserving the death penalty, he was to be punished by ordering his entire head to be shaved, he might be banished from the country (from the city acc. to Nār.), a mark appropriate to the grave sin committed by him might be branded on his forehead and he might be paraded on an ass.<sup>631</sup> Yama,<sup>632</sup> quoted by Sm. C. and V. P., while providing that a brāhmana was to be free from undergoing corporal punishment, allows

631. वधाद्वे ब्राह्मणस्य न वधे ब्राह्मणोर्हति । शिरसो दुष्टद्वं दुष्टस्तरप निर्वातने दुरत् । तस्मादे क्षत्रियस्तान् वधाये वर्द्धमेव च । नारद (माहस 9-10). In these days of fasts as part of the technique of *satyagraha* for redress of grievances or for justice pursued by Mahātmā Gāndhī and some of his ardent followers it is interesting to note that the widow of the murdered brāhmana referred to on p. 397 had been undergoing voluntary starvation (*prāyopaveśa*) for four days for securing punishment of her husband's murderer (who she believed was a wizard) and that the king himself being unable to prove the guilt of the accused began to starve himself and found proof by supernatural means (Rājatarāṅgi IV. 82-105).

632. न क्षत्रियो ब्राह्मणस्य दुष्टो भवति कश्चित् । दुष्टे तु वश्येने वध्या राजा जनं वधायेत् । अवधारयधनं स्वाकर्म वा कारयेन्मृत्युः । मासार्धमासे कुर्वति कारये विज्ञात वश्यतः । वधपराधे विधे तु विकार्यवधि कारयेत् । अवस्था ब्राह्मणा यावो लोकस्मिन्नेदिकी क्षतिः । वम quoted by ह्युल्लेख. II. p. 317, च. व. p. 393 (only the first).

the king to keep a brāhmaṇa offender in confinement in a secret place and give him bare maintenance or the king may make him do the work of guarding cattle for a month or a fortnight or make him perform other work not fit for a decent brāhmaṇa. The Mlt. on Yaj. II. 270 explains that the mark of female private parts for violating *guru's* bed, of a tavern for drinking the liquor called *surā*, a dog's foot for theft, of a headless corpse for brāhmaṇa murder (as laid down by Manu IX. 237 and 240, Viṣṇu Dh. S. V. 4) is to be made on the forehead only if the offender (whether a brāhmaṇa or not) did not perform *prāyaścitta* for those grave sins. Branding with marks appropriate to the crime committed were in vogue in Rome and in Britain up to 1699 (such as the mark of the letter M for murderers, T for thieves &c.). Vide Barnes' 'Story of punishment' p. 62. The Rājatarangīnī (IV. 96-106) refers to a case in the reign of king Candrāpīḍa of Kashmir when a brāhmaṇa guilty of the murder of a brāhmaṇa was exempted from death sentence because of the *smṛti* rule. Manu IX. 241 gives option that a brāhmaṇa (unintentionally) guilty of grave offences may be punished with the middle amercement or he may be banished from the realm keeping all his wealth. The punishments for a brāhmaṇa offender, according to Gaut. XII. 44, were preventing him from doing the same thing again, depriving him of all wealth, taking sureties from him, proclaiming him as a thief in the city banishment, putting on his forehead the mark indicative of his crime. Āp. Dh.S. (II. 10.27. 16-17)<sup>633</sup> lays down that a brāhmaṇa guilty of murder, theft, forcible seizure of another's land was to have his eyes covered over with cloth for the whole of his life (while a śūdra guilty of any of the three was to receive the death sentence). Vṛddha-Hārīta (VII.209-210) says that a brāhmaṇa should be branded on the body for all those offences that entailed corporal punishment for other offenders, that he should have his head shaved, that he should be deprived of all his property and banished from the realm. The force of popular feeling on the point of exempting a brāhmaṇa offender from the death sentence was so great that Elphinstone (Governor of Bombay) in Regulation 14 of 1827, sec. IV (cl. 5) exempted brāhmaṇas and women from death sentence even for murder where public feeling would

633. गुरुवश्ये स्त्रीये घृण्वादान इति श्रान्वादान वधः च क्षुण्णिरप्यस्तेषु बाधनस्य।  
आप. ध. सू. II. 10. 27. 16-17.



be shocked<sup>634</sup>. It is not to be supposed that this exemption of the brāhmana from the death sentence was unanimous or universal. Kai (806) contains this remarkable statement:<sup>635</sup>

634. यत्तु मल्लेनोक्तं 'भद्रपुत्रो मातापितरौ स्यात्कद्रोहिणौ परित्याजकवानमरयो  
जन्मवर्मभुक्तलौकाचारवशात्' इति. यदपि कात्यायनेन 'आचार्यस्य पितृमृत्युवर्ज्यवानो तथैव  
च। एतेषामपराधेषु दण्डो नैव विधीयते' इति सत्त्वारिष्येदण्डयोर्निषेधार्थे न हुनदेवमाश्रयः।  
स्मृतिच. II p. 126. Medhātithi on Manu VIII, 125 makes it clear that the  
absence of a fine occurs only in the case of a brāhmana who was a first  
offender, who did not commit the offence with forethought and who was  
endowed with learning, good family and character. The Sm. C. II. p. 124  
relying on Manu IX, 236 says that a brāhmana could be imprisoned but he  
could not be subjected to such corporal punishment as cutting off a limb or  
whipping. The Smṛtis openly regarded the brāhmana's person as sacred  
and so saved his body. The smṛtis endeavoured to reach the ideal of the  
rule of law and succeeded to a great extent in doing so. They held that every  
man, whatever his rank or condition, was subject to the ordinary law of the  
realm and amenable to the jurisdiction of the ordinary tribunals. The only  
differential treatment that we find is in the appointment of judges (pp. 272-  
273), in the order of taking up causes of litigants (p. 298), in the punishment  
for perjury (Manu VIII, 123-124), in the matter of corporal punishment,  
in abuse, defamation and assault (pp. 395-397), in punishment for adultery,  
in the repayment of debts and in the punishment for theft, which was severer  
for a brāhmana. It will be shown below that from the 13th century, as  
indicated by the Sm. C., S. V. and Madanaratna, differential punishments  
had gone out of vogue. The smṛtis did not, like some modern freedom-loving  
people, declare the equality of all before the law on paper and in practice  
indulge in lynching. Further the smṛtis required all offenders of whatever  
caste to be brought before the same tribunals. Manu VIII, 333 and Yāj.  
I. 335 emphasise that there is none who is exempt from punishment  
in the king's court whether the person be the king's father or teacher or  
friend or mother or wife or a son or a family priest or brother or father-in-  
law or maternal uncle. Śākhya-Likhitā and Kāt. (481) no doubt say that  
a king should not punish his parents, his family priest, teacher, near  
relatives, forest hermits, ascetics. But, as the Sm. C. II. p. 126 explains,  
the real meaning is not that the king is to allow these to escape scot-free,  
but that he should not inflict corporal punishments or fines on these, but  
should employ admonition or severe reproof towards them. The smṛtis  
do not contain rules like those in the Indian Criminal Pro. Code entitling  
Europeans and Americans in India to claim a jury preponderantly composed  
of their countrymen and claiming trial only by the High Court or like the  
privileges of the English Peers to be tried only by the House of Lords for  
felonies or the doctrine of the benefit of clergy abolished in 1827. Vide H. of  
Dh. vol. II. pp. 140-143 and 147-152 about certain privileges of brāhmanas.

635. सर्वस्य दातव्यं खलो जाह्नवायां मलमात्रेण । अदुष्टो वेतिहन् हन्ता हन्तायो  
जाह्नवो पि हि ॥ कात्याय. p. by विम्वर्य on वा. II. 261.

causing abortion, if he be a thief (of gold) or if he kills a brāhmaṇa woman with a sharp weapon or if he kills a chaste woman'. Kautilya (IV, 11) prescribes that a brāhmaṇa who aims at the kingdom or who forces entrance into the king's harem or who incites wild tribes or enemies (against his king) or who foments disaffection (or rebellion) in forts, the country or the army should be sentenced to death by drowning.<sup>635</sup> The fact that Carudatta, a brāhmaṇa, is represented as having been condemned to death by king Pālaka in the *Mṛcchakaṭika* indicates that the sentence of death against brāhmaṇas was not entirely unheard of. It appears from Fick's 'Social organisation' &c. p. 212 that in many Jātaka passages the execution of brāhmaṇas is referred to.

The Śāntiparva chap. 268 contains an interesting dialogue between king Dymnatsena and his son prince Satyavat on the subject of the punishment of death, which contains some of the arguments forcibly urged in these days by those that are opposed to capital punishment altogether. The prince pleads that punishment should be light even for grave offences, that when the sentence of death is carried out in the case of robbers,<sup>636a</sup> several innocent persons (such as the wife, the mother, the son of the condemned man) suffer great loss (and they may die also), that if offenders give themselves up to priests, swear before them that they will never commit sin, they may be let off after undergoing penance, that if great men go astray their punishment should be proportionate to their greatness. The king replies that in former ages when people were most truthful, soft-hearted, and not hot-tempered the punishment of saying 'lie on you' sufficed, then vocal remonstrances and upbraidings sufficed, but in the later ages (of Kali) corporal punishment and death sentence have to be resorted to and that some people are not deterred even by the fear of death sentence.

A few remarks will be made on each of the several modes of punishment. The sentence of death was, acc. to Kām. XIV, 16, Śukra IV, 1, 93, to be avoided even in the gravest offences

635. राजकायुकमन्तःपुरवधर्षकमदम्यनिबोधोऽहं दुर्गाद्वद्वधकोपकं वा शिरो-  
वस्त्रादीनि च पातयेद् । आक्रम्य तमः कवेयकेतु । अर्धशास्त्र IV, 11.

636a. दम्पत्यहमित्ति वे राजा भूपतोऽप्यपनामसः । भार्या माता पिता पुत्रो ह्यपते  
पुत्रवेण वे । न मृतपातः कर्तव्यः &c. शान्ति 268, 10-11.



except for the offence of subverting the state.<sup>637</sup> Viṣṇu Dh. 8. V. 1 provides that all persons except brāhmanas guilty of the mahāpātakas may be sentenced to death. But Manu IX. 236 says that this extreme penalty was to be awarded only if they performed no prāyascitta. Kaut. (IV. 11) prescribes death sentence for causing the death of any one with a sharp weapon. Vṛddha-Harita (VII 190) prescribes it for incendiaries, poisoners, murderers, robbers, bad characters, rogues and those guilty of grave sins. The death sentence was carried out in various ways such as by giving poison or by trampling at the feet of an elephant, or by a sharp weapon (like a sword), by being burnt or drowned<sup>638</sup>. Impalement was a punishment prescribed by Manu IX. 276 for thieves guilty of housebreaking by night (after first cutting off their hands), by Yāj. II. 273 for those who made another a captive or stole horses and elephants or killed another by the use of force and by Vṛddha-Harita VII. 202 for the murderer of a brāhmana or for one who killed a woman, a child or a cow. Death sentence by being trampled under the feet of an elephant continued up to the times of the Marathas. The Daśakumāracarita 4th Uucchvāsa shows that a thief could be trampled upon by an elephant by way of punishment. Vide 'Selections from Peshwa's Daftar' (edited by Mr. G. S. Sardesai) vol. 43 No. 143 p. 114 (dated 7-9-1775 A. D.), where out of seven dacoits of the *Beral* caste two were ordered to be trampled to death at the feet of an elephant<sup>639</sup> and five were ordered to be simply beheaded. Death sentence is said by the Daṇḍaviveka (p. 20) to be simple (*suddha*), which is of two kinds, *asitra* when the offender is beheaded (with a sword), and *citra* or *vicitra* (when the offender is impaled or burnt) and it is *mitra* (when his hands or feet or other limbs are cut off and then he is killed)<sup>640</sup>. Simple death

637. मयस्त्वदराधेयं दुष्टं दानान्तरि त्वजेत् । जते राजापहारात् युक्तदण्डः पशवते ॥ काम. XIV. 16. This is q. by दुष्ट. p. 61 verse 346.

638. विवेधु (?) दन्तिगुजगजखानटनगादिभिः । पापानां पाण्डुरस्य वधदण्डः यकीर्तिः ॥ मानसोद्गम II. 23, verse 1237, p. 144.

639. In 'Pandyan Kingdom' by Prof. K. A. Nilkant Sastri p. 224 the sentence for the murderer of a brāhmana is shown to have been that of being tied to the leg of a he-buffalo and being dragged by it.

640. The word 'suddha-vadha' is used by Manu IX. 279 and the words 'suddha' and 'citra' occur in Kaṇḍiyya IV. 11 and also in Śānti 63. 22 राजो वधं विकीर्णस्तस्य विचो यथो यजेत् । आद्विपकस्य स्तेनस्य धर्मसङ्कति-कस्य च ॥

is prescribed by Manu IX. 271 for those who abet thieves by giving them subsistence, instruments of house-breaking or asylum. If a man of a low caste had sexual intercourse with a woman of a higher caste (with or without her consent) or kidnapped a maiden he was to be sentenced to death (Manu VIII. 366, Yaj. II. 286-288, 294). Vas. XXI. 1-5 prescribed for a śūdra, vaiśya or kṣatriya guilty of adultery with a brāhmaṇa woman the horrible punishment of being burnt to death after being respectively covered with *śirṣa* grass, with red *darbhak*s and *śara* leaves respectively and similar punishment for a śūdra paramour of a kṣatriya or vaiśya woman and for a vaiśya paramour of a kṣatriya woman. The consenting woman (adulteress) was, acc. to Vas. XXI. 1-3, to be shaved, to have her head anointed with clarified butter and to be paraded naked on an ass and left to die on the Great Journey, while, acc. to Gaut. XXIII. 14 and Manu VIII. 371, an adulteress, vain of her charms or the wealth of her parents, was to be openly devoured by dogs, if her paramour was a man of lower caste. Śāṅkha<sup>641</sup> prescribes this punishment (of being devoured by dogs) for a woman's paramour of a lower caste and for the erring woman death by burning. Vṛddha-Harita VII. 192 prescribes that in the case of a woman who is a confirmed adulteress, or who destroys her foetus, her husband should have her ears, nose and lips cut off and then she should be banished and verses 220-221 prescribe death by being burnt with grass (*kaṭagni*) for those guilty of incest. These severe penalties for adultery were very much relaxed and softened by later smṛti writers as is shown in H. of Dh. vol. II pp. 571-573. A man who made a breach in the embankment of a lake or tank (and thereby caused it to become dry) may be sentenced to death by drowning (Manu IX. 279) or a woman who was extremely wicked (such as one who killed her own child in the womb) or who murdered a man or who destroyed the embankments of a tank may have a stone tied round her neck and be drowned, provided she be not pregnant at the time of the sentence (Yaj. II. 278). Yaj. II. 279 (= Matsyapurāṇa 227. 200) prescribes death by being gored by the horns of bulls (after the nose, lips, ears and hands are cut off) for a woman who is guilty of poisoning (the food or drink of another) or who is guilty of incendiarism or who kills her husband, elders

641. श्रेयसः शपनश्रावितं राजा बद्ध्वा न्यभिः आदरेत्कालेभ्यो न वृजेत् । शङ्ख  
quoted by वि. र. p. 326.



or her own child (provided she is not pregnant)<sup>642</sup>. Yāj. II. 382 provides death by being burnt with the fire of straw for those who set fire to growing crops, houses, forests, village, pastures and threshing floors or who approach the queen. Nār. (pārusya, verse 31) prescribes that one who strikes with a weapon the king, even though the latter be at fault, should be impaled and roasted in fire. These examples are enough to convey an idea of the crimes for which the sentence of death was provided in some of the ancient smṛtis. Manu VIII. 272, Nār. (pārusya 24), Viṣṇu Dh. S. V. 24 prescribe the pouring of boiling oil in the mouth and ears of a śūdra who through insolence tries to expound dharma to brāhmaṇas. Cutting off limbs as a punishment (particularly hands and feet or fingers) was common in the case of thieves, pickpockets and cut-purses (Manu IX. 276-277, Nār., parisiṣṭa verse 32, Yāj. II. 274). Excision of the tongue was the sentence when a śūdra abused a brāhmaṇa or a kṣatriya by falsely charging him with some grave sin (Āp. Dh. S. II. 10. 27. 14, Manu VIII. 270, Nārada, pārusya 22), when a śūdra loudly repeated the Veda along with twice-born parsons (Gaut. XII. 4), when a person abused the king (Nār., pārusya 30), when a person repeatedly proclaimed what was disliked by the king or divulged the secret policy of the king (Yāj. II. 302). Excision of the male organ was prescribed for a śūdra who sexually approached a woman of the three higher varṇas (Gaut. XII. 2), for any one guilty of the rape of another's wife (Vṛddha-Hārta VII. 201 and also confiscation of all property), for any one guilty of incest or intercourse with mother, mother's sister, paternal aunt, sister,

642. The general rule was that women were not to be killed on any account. Vide H. of Dh. vol. II, pp. 575, 593-94. Certain offences were exceptions. Even as to them Vas. XXI. 10 and Yāj. I. 72 suggest another and very mild alternative viz. abandonment (*tyāga*), when a woman conceives from intercourse with a man of lower varṇa or when a woman was guilty of killing her husband or father. Acc. to the Mit. on Yāj. III. 268 the king appears to have had to undergo some expiation for ordering the death of a guilty woman. In the 18th century the famous judge of the Peshwa's court, Rāmāstri Prabhū, ordered a woman guilty of a brāhmaṇa's murder to undergo only the expiation of circumambulating the holy shrine and hill of Tryambakeśvara near Nashik ('Selections from Peshwa's Daftar', vol. 43 No. 136 pp. 121-122). Under sec. 362 of the Indian Criminal Procedure Code 'if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to transportation for life'.

the wife of an uncle, friend or pupil, daughter, daughter-in-law, teacher's wife, a woman come for refuge, the queen, an ascetic woman, a wet-nurse and any chaste woman or a woman of a higher varṇa (Nār., *śūdrapūṇyayoga* 73-75). The nose, the ears and the hands were cut off in the case of an offender guilty of selling false gold or forbidden flesh such as that of a dog (Yaj. II. 297). For branding, vide Gaut. XII. 44, Baud. Dh. S. I. 10. 19, Nār. (*sāhasa* 10), Manu XI. 237 (= Matsya 227. 16), Viṣṇu Dh. S. V. 3-7. The *Dandaviveka* (p. 47) states that branding was to be resorted to if the proper penance was not performed and if the offence was intentional. Yaj. II. 202 provides branding for a gambler using false dice and (II. 294) for persons of the three higher *varṇas* having intercourse with a very low caste woman and Dakṣa VII. 33 prescribes it for an ascetic giving up his duties. The *Rājatarāṅgiṇī* mentions (VI. 108-112) that king Yaśaskara (939-948 A. D.) of Kashmir branded on a brāhmaṇa's forehead the mark of dog's foot. Keśavapāṇḍita in his *Dandanīti-prakarana* (p. 6) quotes the author of the *Vaijayanti* (Nanda-pāṇḍita) to the effect that the making of marks was to be effected with the juice of the marking nut in the case of brāhmaṇas and with a red-hot iron *śalākā* in the case of others. In England about a hundred years ago branding for desertion from the army was practised. Manu VIII. 370 prescribes the shaving of the head as a punishment for a woman who pollutes a maiden, Nār. (*sāhasa* 10) prescribes it for a brāhmaṇa who is not sentenced to death on account of his caste, Śaṅkha-Likhita (q. by Aparārka p. 807) for one who abuses officers, brāhmaṇas and elders. Megasthenes (Fragment XXVII. p. 72) notes 'If one is guilty of a very heinous offence the king orders his hair to be cropped, this being a punishment to the last degree infamous'. Imprisonment for life is prescribed by Viṣṇu V. 71 for striking out both eyes of a man and by Śūkra IV. 1. 88 (for repeating an offence more than three times) For imprisonment with labour, vide Śūkra IV. 1. 92 and 108-109. Flogging was prescribed<sup>643</sup> by Viṣṇu Dh. S. V. 105 for a woman.

643. The punishment of whipping is allowed in England for several offences; vide 'Laws of England' (ed. by Lord Halsbury, vol. IX, pp. 229-230). In India under the Prisons Act (IX of 1894) by section 46 whipping is allowed for certain prison offences and under the Whipping Act (IV of 1909) whipping is awarded for certain offences such as theft, house-breaking, dacoity, rape and for juvenile offenders. In modern times many persons interested in criminology and penology condemn most strongly the sentences of death and whipping. *गणेशदास तु केचित् द्विदशवार्षिकं त्वं नृणां । अनीदृशते तु निर्विद्वान्सेवां दण्डस्तु तदन्वयः । श्रीवातेनन्तहृदयान् दण्डिद्वारां तु रोमिणाम् । भिक्षाविद्वत्तरन्नामोर्विद्वान् नृपाविर्दमम् ॥ काका. q. in *व्यव. वि.* pp. 331-332.*



in her monthly course touching intentionally members of the higher castes. It was also prescribed for offenders who were slaves or who were dependents and for women, minors, lunatics, old men, poor men and those suffering from diseases (Kāt.). The punishment of banishment was prescribed for brāhmanas guilty of the gravest offences meriting death sentence (Gaut. XII. 44, Manu IX. 241, VIII. 380, Viṣṇu Dh. S. V. 3 and 8, Baud Dh. S. I. 10, 19, Yāj. II. 270). It was often associated with branding. Banishment is also prescribed by Yāj. I. 339 for officers taking bribes (and also confiscation of all wealth), for a perjured brāhmana witness (Yāj. II. 81), for one who embezzles the money of a corporation or transgresses the conventions agreed upon by a guild or village &c (Yāj. II. 187, Manu VIII. 219, Viṣṇu Dh. S. V. 167-168), for playing with false dice (Yāj. II. 202 and Nār., *dyūtasamāhvaṇa* 6), for a brāhmana guilty of very heinous offences<sup>644</sup> (Śānti 14. 116). Śakra (IV. 1. 98-108) contains a long list of offenders that deserve to be sentenced to banishment. Confiscation of all property was the punishment for several offences such as the commission of the *mahāpātakas* by persons other than brāhmanas, provided they committed them unintentionally (Manu IX. 242), for perjury, for taking bribes by *sobhyas* (Viṣṇu Dh. S. V. 179-180). Nār. (*prakīrṇaka* 10-11) provides a humane rule that even when the king orders the confiscation of all the property of an offender he should not deprive the offender of the tools of his trade or the tools of his craft, such as arms in the case of a soldier, materials of art in the case of artisans, ornaments of courtezans, musical instruments of musicians. Śaṅkha-Likhita<sup>645</sup> quoted by V. R. p. 656 contain a similar provision. Enhanced punishment was prescribed for committing an offence again. Viṣṇu Dh. S. III. 93 holds that a king should never pardon or let off a man who is guilty of a second

644. महासाहसिकं विषे कृताङ्गं दिव्यमपेत् । शान्ति 14. 116.

645. शिल्पिनः कारकः कुशलोपार्थं स्वमित्रोपकरणानि रक्षेत् । तुल्यमान-  
मस्तिमानमस्तुत्यानि वणिक्पुष्पाणां, श्रेयसीजमकपोलकटकपर्कद्वयार्थं कर्षकाणां, वाद्यमान्डा-  
लङ्कारवासांसि रत्नोपजीविनो, यज्ञसम्पन्नकुमारवासोसि वेश्यानां, अस्त्राणि चामुधोपजी-  
विनां सर्वेषां कर्तव्यद्वयानि नाह्वयानि राज्ञा । अपामिक्षेण हि दुश्पाः पापपदुलाभादिपे-  
पाश्च सर्वान्ति तेभ्यः पापेभ्योऽनाम्नाता तस्यान्नापनाप्राप्त्यकरणान् कुर्वाप्तम्लाना हि दृष्टिर्भ-  
वति । दृष्टिचलो नियासः । तैत्तिरीयसंहिताः स्कौतं राजकुल्यते । अङ्गुलिसिध V. by वि. र.  
p. 656, which explains 'स्वमित्रोरेषु सर्वस्याप्यारभोग्नेषु अपरप्रेषु ... भक्तं कुवि-  
सिद्धपरमं कर्षणद्वयं दत्तादि'. Compare section 60 (a, b, c) of the Indian  
Civil Pro. Code for the property which is not liable to attachment and sale  
in execution of a decree.

offence (though a first offender may be let off with a mere admonition). Kauṭ. IV. 10 states that when a person is a first offender as to theft at a holy place or as a pickpocket or house-breaking from the roof, his thumb and index finger may be cut off or he may be fined 54 paṇas, for a second offence all fingers may be cut or a fine of 100 paṇas may be levied; for a third offence the punishment is cutting of the right hand or a fine of 400 paṇas and for the fourth death in any way the king may direct. Manu IX. 277, Yāj. II. 274, Viṣṇu Dh. S. V. 136 contain a similar rule. Vide Āp. Dh. S. II. 10, 27. 11-13 for adultery. If several people conspire together and kill or injure a single man the punishment was to be double of what a single man committing the same offence would receive (Kauṭ. III. 19, Yāj. II. 221, Viṣṇu Dh. S. V. 73). As indicative of the superstitious of ancient (and even modern) times punishment for witchcraft may be mentioned. Kauṭ. IV. 4 prescribes<sup>646</sup> the employment of spies to find out those who profess to use charms for securing illicit love and banish them and adds that persons who are engaged in witchcraft to injure others may be similarly dealt with. In the times of the Peshwa wizarḍas<sup>647</sup> and raisers of ghosts appear to have been frequent and were severely dealt with by the people themselves by being put to death, but the State generally confiscated the property or cut off the alleged wizard's finger. Up to the beginning of the 18th century even in England wretched old women were frequently convicted as witches and hanged<sup>648</sup>

646. ई वा मन्त्रयोगसूक्तकर्तृभिः इमां प्रायश्चित्तैर्वा सर्वजनकारकं मन्त्रेण ते सर्वे अपातुः अमुं वाचं स्तुवां दुहितरं वा कामये वा यां यन्निजामन्त्रात्मरं चार्चः न विप्रमृतामिति । स चेत्तथा कुर्वति सर्वजनकारकं इति उपारयेत् । तेन हृत्प्रायश्चित्तैर्वा वाचयती । औचित्य IV. 4.

647. Vide 'Selections from Peshwa's records' vol. 43 pp. 25-26 about frequent witchcraft in Kolhapur territories (and a wizard of the mang caste being unpaied), p. 32 (for a woman who was killed as a witch by the Patils without Government orders) and Rao Bahadur Wad's extracts from Peshwa's Diaries vol. II. p. 7 (for confiscation of Vatan and fating to the ground the house of a ghost-raiser) and vol. VIII. p. 147 (for cutting off a finger).

648. Vide e. g. 6 State Trials p. 647 (a trial of witches held in 1665 A. D. before Sir Matthew Hale C. B. who condemned them to death) and 8 State Trials p. 1017 (in 1682) and Stephens' 'History of Cr. Law of England' vol. II. p. 439 for numerous cases of trials for witchcraft between 1633 to 1712 A. D. Vide Lea's 'Superstition and force' (ed. of 1878) p. 425 as to torture of heretics for extracting confessions expressly allowed by Papal Bulls and pp. 506-507 for torture being allowed in sorcery and witchcraft cases in England up to the 17th century. Vide a very discerning and interesting paper on 'Witchcraft in Ancient India' by Dr. Winternitz in Indian Antiquary, vol. 23 pp. 71-83.



Manu IX. 290 (= Matsya 227. 183) prescribes the very mild punishment of the fine of 200 *papas* for all incantations intended to destroy life, for magic rites and various kinds of raising ghosts and goblins. Medhātithi and Kullūka say that if the magic rites are successful the punishment would be that for murder. Br. (S. B. E. vol. 33 p. 361 verse 16) provides banishment for those who practise incantations with roots.

Kaṭṭh in II. 5 prescribes<sup>649</sup> that a jail should be constructed in the capital provided with separate accommodation for men and women kept apart and well guarded at the entrances. He further provides<sup>650</sup> that among the duties of the *nāgaraka* is to let out of the jail on the day of the festival of the birth constellation of the king and on the full moon day (of every month) such persons as are young, very old, suffering from diseases and helpless, or those who are charitably disposed may pay the fines or others bind themselves by an agreement to pay in cash the fines for the offences for which the prisoners are jailed (and then the prisoners may be released). The persons jailed may be set free on their working every day or once in five days or by undergoing corporal punishment (whipping &c.), paying fines in cash. Prisoners may be released from jail (as a favour) on the conquest of fresh territory or on the coronation of the Crown Prince or on the birth of a son to the king. In the Delhi Topra Pillar Edict No. IV (Corpus I. I vol. I p. 123 and E. I. vol. II. pp. 353-54) Emperor Aśoka promulgates that he gives three days' respite to prisoners on whom judgment has been passed and who have been condemned to death and in the 5th Pillar Edict of Delhi Topra (Corpus I. I vol. I p. 126-128 and E. I. vol. II. pp. 258-259) he says that he let off prisoners 25 times in 26 years (which is in conformity with Kaṭṭh's dictum cited above). In the first separate Edicts at Dhauḷi Aśoka addresses his officers of justice in the capital (*Nagrayāyāhārakāḥ*) that they should so act that even a single person should not unnecessarily suffer imprisonment or pain. In spite of this if we are to believe Yuan Chwang, Aśoka in his early career was most cruel and had constructed a jail

649. विमकलीपुत्रस्थानमपमारातः सुमुक्तकथं बन्धनामारं कारयेत् । कौटिल्य II. 5.

650. बन्धनामारं च जातदुष्टावाधितानाथानां च जातसुखपौर्णमासीषु विमर्शः पुनश्चोक्ताः समपातुवद्वा वा दीयन्निष्कजं दद्यात् । दिवसे पञ्चरात्रे वा बन्धनस्यान्तं विमोचयेत् । कर्मणा काचदण्डेन शिरसापुत्रदण्डेन वा । अपूर्वद्वेषापिनेमे पुनराजाभिषेचने । पुनराजन्मनि वा मोक्षो बन्धनस्य विमोचने । कौटिल्य II. 36.

that was called Hell-prison of Aśoka (vide Watters, vol. II, pp. 88-90). Manu IX, 288 requires that all jails should be so built as to abut on the royal road where the offenders suffering pain and in bad condition would be seen by all (in order to deter others from committing offences). The Śilappadikāram, one of the earliest works in Tamil, mentions the release of prisoners on the king's birthday and at the founding of a temple (pp. 38-39 of Mr. Dikshitar's translation). Kālidāsa in the *Malavikāgnimitra*<sup>651</sup> (Act IV) makes the Vidūṣaka report to the king, 'the astrologers think that, as the constellation on which Your Majesty was born is in evil aspect now, let all prisoners be released'. Kālidāsa (in *Raghu* 17.19) alludes to the release of prisoners and the commutation of death sentences at the time of the coronation of king Atithi. The *Bṛhat-Samhitā* (47-81) states that when the king takes the *Puṣyamūna* (ceremonial bath on the day on which the moon is in conjunction with the Puṣya constellation in the month of Pausa or every month) he may order release except as to those prisoners who were convicted for offences connected with his own person or with the harem.<sup>652</sup> In the *Mṛcchakaṭīka* (Act X) also various occasions for the release of prisoners are mentioned by the executioner. The *Harṣacarita*<sup>653</sup> (II, 2nd para) refers to the usage of releasing prisoners at the time of a coronation and on the birth of Harṣa (IV.). The prisoners are described in the latter passage as having long beards and as darkened by the accumulation of dirt on their bodies.

Manu IX, 243 enjoins upon the king not to appropriate to himself the property of a man guilty of the mahāpātakas (by way of fine or confiscation) and warns that if he takes it out of greed he is tainted by the guilt of the offender. Manu (IX, 244-45) recommends that such fine may be cast into water as an offering to Varuṇa (the Lord of waters) who wields sceptre even over kings or may be bestowed on learned and virtuous

651. द्वेषवन्तकैर्विज्ञापितो राजा । सोपसर्गं नो नश्ये सर्ववन्धनमोक्षः क्रियता-  
मिति । मालविकाग्निमित्र IV, after verse 3; अणुच्छेदे स षड्धात्री यथाहोषामवधकाः ।  
धुराणां च धुरो मोक्षमर्षोर्हं चादिशङ्खपाद ॥ राघु. 17. 19.

652. बन्धनमोक्षं कुर्वाण्यन्तराशेषकृत्स्नम् । इतरमंदिता 47. 81, on which उत्पल  
remarks 'बन्धनरोरे अन्तःपुरे वा येदं विः कृतः &c.'

653. अनिमयोदितस्य सर्वस्यां पुष्पिण्यां सकलकुलसम्बन्धनमोक्षमकरोपयत्पुष्पस-  
मवा । इत्यन्तरित II, para 2; यत्सम्बन्धसुजातलज्जितानामनि बहलमहत्कृतकृतकालं  
कायानि नश्यतः कलिकालस्य बान्धवकुलानीषाकुलान्धवावन्तः सुखानि बन्धनान्धवानि ।  
इत्यन्तरित IV.









friends, relatives, brāhmanas and the servants of the king on their request.

4. It appears that a period of twenty years was prescribed for avoiding a document on the ground of patent defects by one who had seen it and was affected by it. Vide Kāt. 298-300. Similarly when a thing is enjoyed for twenty years on the basis of a writing in the presence of an opponent able (to challenge the enjoyment and the writing) then the writing becomes unassailable (even if the witnesses are all dead or there is no other document for comparison). Vide Kāt. (299)<sup>658</sup>.
5. A deed settling a boundary dispute becomes unassailable after twenty years. Vide Kāt. (301)<sup>659</sup>.
6. No suit can lie on a document executed beyond thirty years, which has never been seen by any body nor read out (by the creditor to any body) even though the attesting witnesses may be living. Vide Br. (S. B. E. vol. 33 p. 308 verse 29)<sup>660</sup>.

In the preceding pages we have passed in review the law of judicial procedure, evidence and limitation. A careful perusal will convince any unbiassed reader that the Dharmasāstras evolved during the course of centuries an indigenous system of judicial procedure of a high order. Nārada, Bṛhaspati and Kātyāyana represent the high water mark of ancient Indian adjective law. These writers flourished before 600 A. D. and the first two of them are probably older by several centuries than that date. They present an orderly system providing for the appointment and duties of judges, proper pleadings, the law of evidence and limitation, decrees and their execution, crimes and punishments. This system compares most favourably with any system of judicial procedure prevalent anywhere in the West up to the 18th century A. D.

658. दृष्टे पक्षे सङ्गतम् दोषाशोकवाङ्मनिको यदि । ततो विज्ञानिर्वाणि स्थितं पक्षं स्थिरं भवेत् ॥ कार्या. (298) q. by अथ. मा. p. 340, परा. मा. III. p. 136; शक्यं सन्निधानार्थं येन लेखनेन द्रुपदे । वर्षाणि विज्ञप्तिं यावत्पञ्च दोषवन्ति ॥ कार्या. 299 q. by मित्रा. ०० वा. II. 24, अपराकं p. 690, अथ. मा. p. 340.

659. सीमाविशदे निर्णयि सीमापक्षं विधीयते । तस्य दोषाः नवकस्याः यावद्वर्षाणि विज्ञप्तिः ॥ कार्या. 301 q. by मित्रा. ०० वा. II. 24, अपराकं p. 691, परा. मा. III. p. 136.

660. लेख्यं विज्ञप्तमन्तर्गतमदृष्टाभावेन च यत् । न तस्मिन्निगम्यतेति तिष्ठत्वादि हि माशेषु ॥ दृष्ट-व. by अपराकं p. 692, अथ. मा. p. 340.

## CHAPTER XVI

### CONTRACTS

There are only three titles of law, viz. recovery of debts, the relation of husband and wife (*stripuṣyaṅga*) and partition of wealth (*dāyabhāga*) that are of importance to modern Hindus, since to a very large extent they are even now governed in these matters by the ancient Hindu Law as interpreted by the commentators. These three topics therefore have to be described in detail while other titles will not and cannot be allowed to occupy much space. In almost all *smṛtis* and digests of Hindu Law *ṛudāna* (recovery of debts) is treated of first. Therefore here also that subject will be taken up first. A good deal of the matter falling under the title of the relation of husband and wife has already been dealt with in the 3rd volume of the History of Dharmaśāstra pp. 427-636. The topic of *dāyabhāga* will be dealt with last of all, the other topics being taken up in the same order as in Manu. Many of the *vyavahārapadas* are concerned with the law of contracts in various aspects, viz. the contract of debt, of pledge or mortgage, of bailments, of sale, of partnership, of hire and service.

Our writers do not set out with an analysis of the conception of contract in general. They had before them the ancient 18 titles of law, many of which related to various kinds of contracts and therefore they take up one title after another, in the order contained in Manu or in Nārada (as the Sm. C. II. p. 206 expressly says). But it is not to be supposed that they did not evolve certain general principles about contracts. They do say a good deal about the competence of persons to enter into contracts, about fraud vitiating all contracts, about damages for breach of contract &c. Similarly the dharmaśāstras do not lay down a general Code of rules applicable to all transfers of immovable property, nor do they treat of transfers by way of sale, mortgage or gift in separate sections. What they have to say on these transfers is tacked on to some *vyavahārapada* e. g. they speak about sales and exchanges of land under *asvāmi-vikraya* and *śmāvivāda*, about gifts under *dattāpradānika* and about mortgages under *ṛudāna*. As this work has to represent what the ancient law was like the same



arrangement has been followed here. Similarly the law of crimes is not to be found in one place. It is scattered under different titles of law such as *vākpāruṣya*, *dandapāruṣya*, *sāhasa*, *atrasaṅgrahana* and *eteṣa*; nor is there a complete analysis of intention or motive or of the right of private defence, although all these subjects are briefly dealt with in the *smṛtis* in different places.

A great deal has been said by ancient writers about what persons are competent to enter into transactions (*vyavahāra*). The *Arthashastra* (in III 1)<sup>661</sup> has a lengthy discussion on it. Briefly, it holds that dependant persons, minors, extremely old people, those charged with grave sins, *sanjñāsins*, persons who are devoid of a limb and those who are addicted to vices (like drinking and whoring) are incompetent and agreements made with such people are invalid. Among dependant people Kautilya mentions a son when the father is alive (and manages the affairs), a father when he has a son (who manages the family affairs), a brother who has left the family, a younger brother whose share has not been separated, a woman whose husband or son is alive, a slave or a hired servant. He states that these may enter into binding agreements if those on whom they are dependant authorize them to do so. He further says that contracts made by persons that are at the time of making them intoxicated or are under the influence of wrath or are distressed or are of unsound mind or under duress (imprisoned or confined) are invalid. Yāj. (II 31-32) concisely puts down the same propositions by saying that all transactions brought about by force or fraud should be declared (by the king) to be unenforceable, so also those entered into by women or the other persons specified above or entered into at night, or in the interior of the house or outside the town or village (in a forest &c.) or with one's enemy or by persons unconnected with or unauthorized by the persons who are to be bound by them.<sup>662</sup> Manu (VIII 165 and 168) also declares that all transactions (such as sale, mortgage, gift) brought about by force or fraud are

661. अथाव्यवहारेषु कृताः, पिबुनता दूषेण, पित्रा दूषयता, निष्कुलेन प्राया, कनिष्ठेनाविभक्त्येन, यस्मिन्ना दूषयता च क्रिया, दासादितकाभ्याम्, अपातलसिन्धुवहाराभ्याम्, अभिज्ञातमन्त्रविदोऽप्युपवसनिभिश्चाप्यत्र निवृत्त्यवधारणेन, । तत्रापि कुद्वेनर्त्तनसर्तनोऽप्येनापद्वेनेन वा कृता व्यवहारा न सिध्येयुः । अर्थशास्त्र III. 1.

662. It should be noted that the rules of Kaup. and Yāj. are in remarkable agreement with sections 11 to 19 of the Indian Contract Act (IX of 1872).

null and void. Nār. IV. 26-42 treat this subject<sup>663</sup> exhaustively. Some of Narada's dicta are interesting. He says: 'in this world three are independent viz. the king, the Vedic teacher and the head of the house in his own house (32). Wives, sons and slaves are not independent; the head of the house has independent power as to what belongs to him by inheritance (34).' Kāt. (497) also prescribes that one should not give a loan to women, minors or slaves. When the texts say that women are incompetent to make contracts, what is meant is that they cannot make contracts binding on their husbands or family or against the family property. Women are not inherently incompetent to deal with their own separate property except that the husband has some control (these matters will be discussed at length later on under *stridhana*). Another proposition laid down by Yaj. II. 23, Nār. IV. 97, Kāt. (517) and others<sup>664</sup> is that in all transactions relating to a debt or any other title of law the last act is the deciding factor; but in the cases of gift, pledge or purchase each prior transaction (of gift &c.) is of superior efficacy to the succeeding one.<sup>665</sup>

After the establishment of British rule in India during about 150 years numerous publications dealing with Hindu customs and usages and the Hindu law of debts, contracts, adoption, family rights, partition and inheritance have been published. It is impossible to give an exhaustive list of these nor is it necessary to do so. Most of them have now only an academic or historic interest. But a few of them must be mentioned for their worth, for purposes of study and for a knowledge of the modern Hindu Law as administered by the British Indian courts. They are: Bannerjee's 'Hindu Law of Marriage and *stridhan*'

663. The *Vyavahāramīmāṃsā* p. 288 quotes five verses as from Kaundhīya which are almost the same as Nārada IV. 29, 30, 39, 34, 40 respectively. The learned editor does not notice this.

664. पश्चाद्विदुः सर्वं न तदवस्थुः क्वचित् । सति यदापि कर्तुं पुनः पुनः कर्तुं न शक्नुते ।  
Nārada IV. 97 : अपाधिके द्वयोर्विषये कुर्वन्तः यद्विपश्चिन्तयेत् । तयोः पूर्वकर्तुं शक्यं तदकर्तुं चोत्तर-  
द्वयभाजः कर्तव्यः 517 q. by सूत्रचिन्ता, II, p. 144, सि. र. p. 35, स. सि. p. 237.

665. For example, if A establishes that he lent a sum to B but if the latter establishes that he repaid the amount, this later fact of repayment is decisive of the dispute if A files a suit for recovery of the money. If A mortgages a field to B for a loan and then mortgages the same field to C, the mortgage of B, being prior, is superior to that made in favour of C. The same principle is laid down in section 48 of the Transfer of Property Act (IV, of 1882).



(5th ed. of 1923); Colebrooke's Digest of Hindu Law, which is a translation of Jagannātha's Vivādabhangarāya (3rd ed. of 1864, Madras); the several volumes of the Bombay Gazetteer and the Gazetteers of the other provinces and the Imperial Gazetteer of India; A. Ghosh's 'Law of endowments' (2nd ed., 1938); Dr. Jolly's Tagore Law Lectures on Partition, Inheritance and Adoption and *Recht und Sitte* translated by Prof. Batakrişna Ghosh (1928); Mayne's Hindu Law (10th ed. of 1938); Mulla's Hindu Law (9th ed. of 1940); K.L. Sarkar's 'Mimamsa rules of Interpretation'; G. C. Sarkar's Hindu Law and Hindu Law of Adoption (2nd ed. 1916); Rajkumar Sarvadrikari's 'Principles of the Hindu Law of Inheritance' (2nd ed. 1922), Dr. P. N. Sen's 'General Principles of Hindu Jurisprudence' (1918); Steele's Law and custom of Hindu castes in the Deccan (London, 1868); Stoke's Hindu Law Texts (a work constantly quoted by the Courts and the Privy Council) containing English translations of the Mitākṣarā, the Dayabhāga, the Vyavahāramayūkha, the Dattakamīmāṃsā, the Dattakacandrikā, the Dayakramasaṅgraha; West and Bühler's Digest of Hindu Law.

The idea of the liability to pay off one's debts was developed in India in the most ancient times. In Rg. VIII. 47. 17<sup>666</sup> the poet exclaims 'Let us drive away the evil effects of bad dreams as we pay off debts'. In Rg. X. 34. 10 (the gambler's lament) it is stated that the gambler, because he owes a (gambling) debt, is afraid and approaches the houses of others at night, desiring wealth'.<sup>667</sup> This indicates that a debtor was afraid of being detained by his creditor in those days. Rg. VIII. 66. 10 indicates that money-lenders made a stipulation to receive double of what they lent, 'Indra strikes by his power all *paris* who make representations of taking double'.<sup>668</sup> The Ait. Br. 33. 1 (*ṛyam-asman am-nayati*)<sup>669</sup> employs the very verb '*am-nayati*' which occurs in Rg. VIII. 47. 17. The Atharvaveda VI. 117. 3 and Tai. Br. III. 7. 9. 8 contain the same verse about a man being free from the obligations of this world, the next

666. यथा कलौ यथा जलं यथा जलं संनयाममि । एवा दुष्प्रवृत्त्यं सर्वमाप्यसे सं नयाम-  
मरमेवमो न ऊतयः सुऊतरो न ऊतयः ॥ अ. VIII. 47. 17.

667. कथाया विप्रद्वन्द्वमिच्छमानोऽप्येषामस्तुपमकमेति । अ. X. 34. 10.

668. इन्द्रो विश्वान् वेकनाटो अहर्बुधं नत कृत्वा यतीरति ॥ अ. VIII. 66. 10  
The word वेकनाट is very like a *prākrit* word.

669. ज्ञापमानो वै ब्राह्मणमिर्कणवा जायते ब्रह्मचर्येण कविभ्यो वज्रेण देवेभ्यः  
पूजया विदुष एव वा अदुणो वा दुर्धी यथा ब्रह्मचरिणामो । तै. सं. VI. 3. 10, 5; अगम-  
सिन्धु संनयपदवृत्तार्थं च गच्छति । शिवा दुष्प्रवृत्त जातस्य परपञ्चेनीकतो मुक्तम् ॥ ऐ. भा. 33. 1.

world (of pits) and the third world (the world of gods).<sup>670</sup> The Tai. S. (III. 3. 8. 1-2) uses the very word 'kustida', which occurs<sup>671</sup> in the Dharmasūtras and smṛitis (for money-lending) when it says, 'O Agni! whatever debt has not been paid back by me, the tribute that I owe to Yama, here do I make return of it; may I be freed from that debt!'. The Śat. Br. XIII. 4. 3. 11 associates *kustidā* with black magic in the Pāṇḍava. The Nirukta (VI. 32) while commenting on Rg. III. 53. 14 explains the word 'Pramaganda' occurring therein as 'one who is born of a family that is extremely usurious'.<sup>672</sup> Pāṇini employs the technical word 'uttamarna' (creditor) in his sūtra 'dhāreṇ-uttamarnah' (I. 4. 35), he speaks of 'ādhamarṇya' (the position of a debtor) in II. 3. 70 and the word 'pratibhū' occurs in Pāṇini II. 3. 39, the word 'vṛddhi' (interest) in V. 1. 47. Pāṇini (IV. 4. 31) derives the words 'kustidika' and 'kustidikin'. It is noteworthy that Pāṇini does not derive or mention the word *vārdhugika*, which is employed by even Āp. Dh. S. and Band. Dh. S. and which is derived by Kātyāyana (the grammarian) in Vārtika 3 on Pāṇini IV. 4. 30, in which Pāṇini refers to such words as 'dvaiguṇika' or 'traiguṇika' which were applied to people that carried on the condemned methods of money-lending viz. extorting twofold or threefold of the money lent (the sūtra is 'prayacchati garhyam'). Brahmanaspati is spoken of as 'one who recovers a debt (*ṛṇam-ādadāh*) in Rg. II. 24. 13 and the Ādityas as those 'who, themselves being the observers of *rā* (the universal Law of Right), collect<sup>673</sup> debts' (Rg. II. 27. 4). In Rg. VIII. 32. 16 it is said that those priests who extract (and offer) Soma juice do not indeed owe a debt (to the gods). Divodāsa is said in Rg. VI. 61. 1 to have been the gift of Sarasvatī to Vadhyaśva as a son to pay off debts (*ṛṇayutam*).<sup>674</sup> These passages certainly establish that in the remote ages of the

670. अतृणा अस्मिन्नृणाः परस्मिन् तुनीये लोके अतृणाः स्थान । ये देवताना उत्त विदुषाणाः सर्वानप्यो अतृणा आ कीरेम ॥ तै. वा. III. 7. 9. 8, अथर्ववेद VI. 117. 3 (with very slight variations).

671. वस्तुसौदमवतीर्त्तं मयि येन वमरप बलिना चरामि । इद्वेन सन्निवद्वे तदेतसद्वे अतृणो भवामि ॥ तै. सं. III. 3. 8. 1-2; अथर्ववेद VI. 117. 1 closely agrees.

672. मन्वन्तः कुसीद्वी साकुद्वो मामागमिष्यतीति वृदाति तद्वपत्तं वममन्दः अममन्तः कुसीदिद्वितीयः । निरुक्त VI. 32.

673. दीर्घाधिपो स्वमाणा असुर्वद्वुनावातश्चदमाणा जगामि । ऋ. II. 27. 4.

674. इषमद्वदाइमसद्वृणस्तुत दिवोदासं वाधश्वाप दाकुपे । ऋ. VI. 61. 1.



Rgveda it was a firm belief that men were under obligations to gods and pitrs, which could be fulfilled only by worship (yajña) and by the birth of a son. These passages contain the germ of the doctrine of the three religious and spiritual debts that a man owed to gods, Manes (pitrs) and sages, which he paid off by sacrifices, by the birth of a son and by vedic study ( vide Tai. S. VI. 3. 10. 5, Śat. Br. I 7. 2. 11 and Alt. Br. 33. 1 quoted in H. of D. vol. II pp. 270, 560 notes 621 and 1302 and above n. 669). Gradually further universal obligations came to be added to this theory of spiritual debts. The Ādiparva (120. 17-20) holds that men owe four debts, viz the three vedic ones and the fourth to humanity in general ( which is paid back by goodness to all ) and Anuśāsana 37. 17 raises them to five ( adding brāhmanas and guests to the well-known three )<sup>675</sup>. It appears to me that this theory of spiritual debts being already in the air, the same sanctity came gradually to be transferred to one's promises to repay monetary debts and carry out other secular engagements. The word *ṛṇa* had been applied both to spiritual and secular debts. It is on account of this that the son was not only desired for repaying the spiritual debt owed to one's ancestors, but he was also expected to free his father ( if the father could not himself repay the monetary debt ) from the liability he incurred to his creditor. Nār. IV. 5-9 puts this clearly and most emphatically : " fathers desire to have sons for their own benefit thinking in their heart ' he will release me from liability to creditors and debtors ' ( or probably ' from high or low debts ' i. e. spiritual and earthly debts ). Three deceased ( ancestors ) must be honoured ( by a man ) and he must subsist on three ( descendants ) that come after him. These ( the first three ) series of ancestors rely ( for repayment ) of their twofold debts ( spiritual and secular ) on the fourth in descent. If a man fails to pay on demand a debt or promised gift, that sum ( by the addition of interest ) goes on growing till it amounts to a hundred crores and when a hundred crores are reached he is born again and again in the house of his creditor as a slave in order to repay the debt ( by his labour ). If an ascetic or a brāhmaṇa perpetually keeping the sacred fire ( *agnihotrin* ) dies

675. अग्नेश्चतुर्भिः संसृता जायन्ते मानसा मुनिः । पितृदेवाग्निमुनेर्देवं तेन्दध्व प्रमत्तः ॥  
... यज्ञैस्तु देवान् कीर्णति स्थापयत्यस्य तृतीयः । इवैः भास्तेः पितृभ्यापि आसृशस्तेन मान-  
सान् । आदिपर्व 120, 17-20; अणुश्रुत्य देवानामसृशोऽस्य च तृतीयः च । पितृणामथ  
विनाणामतिधीनो च यजमानः । अनुशासन 37. 17.





two verses: 'a vārdhusika (usurer) is one who taking cheap grain lends it on condition of receiving a quantity of grain of high price and is condemned among the *brahmacāridins* (students of the veda). Brahmana murder and usury were weighed in a balance; the murderer of a brahmana rose to the top while the usurer trembled'. Here usury of the type of the one described in Vaa. II. 41 (and not all lending of money at interest) is condemned as a great sin. Gant. XII. 36, Vaa. II. 50, Kauṭ. III. 11, Manu VIII. 140-141 and others declare it righteous (dharma) moneylending when an 80th part is stipulated as the interest per month.<sup>679</sup>

Megaethenes (fragment XXVII B p. 72) states: 'The Indians neither put out money at usury nor know how to borrow; but he is under some misapprehension, for he again says (p. 73) 'one who is unable to recover a loan or deposit has no remedy at law. All the creditor can do is to blame himself for trusting a rogue'.

Nār. IV. 1 states that the principal topics under the title of *grāhita* are seven: what debts must be paid and what not; by whom, where and in what manner (they are to be paid); and the rules about advancing the loan and receiving it back. The first five of these relate to the debtor and the last two to the creditor. Bṛhaspati (S. B. E. 33 p. 320 v. 4) says that interest (*grāhita*) is described to be of four kinds by some, of five kinds by others and of six kinds by still others. Nār. (IV. 102-104) names four kinds and defines them, viz. *kāritā* (interest that is stipulated by the debtor himself), *śākhā* (interest accruing and payable every month), *kāpikā* (interest of a *paṇa* or quarter *paṇa* to be paid every day without the principal being liable to be reduced, whatever interest may have been recovered), *anukramyadhī* (interest on interest called compound interest). Manu VIII. 153 mentions these four and commentators thereon give varying interpretations. Bṛhaspati (S. B. E. 33 p. 321 verse 5) and Vyāsa (q. by Sm. C. II. p. 154) define *kāpikā* as interest received from the body i. e. milk received from a cow pledged or the work put in by a slave or by a bull pledged. Bṛ. (S. B. E. vol. 33 p. 321 verses 7-8)

679. इमोदहविर्षम्यो विनातिः पञ्चमर्षिको मानसः । शौ. XII. 26; सप्तहृष्यया  
षम्यो मानसविः पञ्चमर्षयः । कौटिल्य III. 11.

adds two more varieties viz. *kikhārvddhi*<sup>680</sup> (hair-like interest i. e. interest payable every day and so growing every day, just as the top-knot on one's head grows every day) and *bhogalābha* (profit by enjoyment i. e. making use of a house or taking the produce of a field in lieu of interest in the case of a mortgage). Gaut. (XII. 31-32) mentions the six, but instead of *bhogalābha* he uses the word '*śathubhoga*', which is defined by Kat. (501) as a transaction in which the complete enjoyment of the thing pledged or mortgaged is to be the interest. Kat. (498-500) defines *kāritā*, *kikhārvddhi* and *bhogalābha*.

Br. (S. B. E. 33 p. 319 verse 1) states<sup>681</sup> that the creditor should always advance a loan after taking an adequate pledge or a deposit (with a mutual friend) or a reliable surety and after committing the transaction to writing or making the loan in the presence of witnesses. The interest may be either stipulated (*kṛta*) at the time of the loan or not stipulated (*akṛta*), as indicated in Visnu VI. 4. Yāj. II. 38 and Visnu Dh. S. VI. 3 state the general rule that debtors of all castes may pay to creditors of all castes the interest settled by mutual agreement and the rate of interest stipulated may be with reference to an

680. ईद्विधस्तुतिषां योक्ता यज्जघाम्यैः प्रकीर्तिता । बहुनिघनमित् समकषाता तस्य-  
मन्ता निघोघतः ॥ बृह. १. ४२ स्तुतिच. II. p. 154, मय. नि. p. 224 (reads बहुनिघान्यैः),  
काशिका कार्यसंयुक्ता मासमाह्वाना तु कालिका । इदोईद्विभक्तद्विदिः कारिता जगिमा कृता ॥  
उपपदे पश्यते वा तु शिखाद्विस्तु सा स्मृता । द्वालोपाः ( कोनः १. 1 ) शक्यं शिखाद्वोगतमः  
प्रकीर्तिताः ॥ बृह. १. ४२ by अमरार्क p. 642, स्तुतिच. II. p. 154, परा म. III.  
pp. 220-221, मय. नि. p. 225 ascribes these to भारद्, लिखितं यद्वि निघे तिरन्ते-  
वाचिष्यते । मृते यदे तपैवेवा शिखाद्विस्तुतः स्मृता ॥ कात्या. in बृहद्व. १२ वी. XII. 32  
and म. नि. p. 233; अतिभोगस्तस्यैवो यो इद्विस्तु परिकल्पितः । यदोयो वत्त यदे स्वादा-  
पिभोगः स उच्यते ॥ कात्या. १. ४२ स्तुतिच. II. p. 154, नि. र. p. 12, वि. चि. p. 4.

681. धारिणी गृहीत्याधि बन्धे वा संप्रत्यक्षम् । लेखवास्यं साक्षिन्वा जणे दद्याद्धनी  
मया ॥ बृह. १. ४२ स्तुतिच. II. 135, परा. म. III. p. 220: 'धारिणी सङ्घिकमुत्तरव-  
यसोत्तरित्यर्थः' ॥ स्तुतिच. II. p. 135. The words *ādhi* and *bandha* are treated  
as synonyms by the Amarakośa and by Br. (S. B. E. vol. 33 p. 321 verse 17.)  
Itself. The difference made by some between the two is this: *ādhi* is a  
pledge or mortgage of a chattel or immovable property to the creditor  
himself (with possession or without), while *bandha* consists in placing in the  
hands of a mutual friend a thing belonging to the debtor in order to inspire  
confidence (in the creditor). 'विषयितं बन्धसादृश्याद्येनाह भारद्. निघोपो निघोपतरयो  
बन्धो निघ्यासकः स्मृतः ॥ इति ।' भारद् १. ४२ by मय. य. p. 224. The m. n. (p. 166)  
defines *bandha* as an undertaking by the debtor that he would not alienate by  
sale, gift or mortgage the house, land or other property of his until the debt  
due to the creditor is paid off. This is clearly an hypothecation without  
possession; यावत्साक्यमुत्तं न सोध्यते तावदेतद्गृहक्षेत्रादिदोमपिकपाधिकरमास्यं न कारितव्य-  
मीति निर्णयो बन्धः । निघ्यासक इति बन्धस्यो निघोपो बन्ध इत्यर्थः । मद्राज्ये निघ. ३३१.



article pledged or with reference to a surety given or with reference to a debt totally unsecured. Though this was the general rule, Manu VIII 153 and Br. condemn taking even agreed interest if it exceeds the rates (to be specified below)<sup>682</sup> allowed by the *smṛtis* or taking the agreed heavy interest for more than a year or taking compound interest or more than double the principal or the capitalization of interest. The *smṛtis* lay down various rates of interest from different points of view. Gaut. XII 26, Yāj. II 37, Baud. Dh. S. I 5. 90-91, Manu VIII 140 (=Nār. IV. 99), Br. (S. B. E. vol. 33 p. 320 v. 3), Vṛddha-Hārīta VII 235 and others state the rule first laid down by Vasiṣṭha that it is just and proper to take every month both part of the principal lent, so that the principal is doubled in six years and eight months,<sup>683</sup> and Vṛddha-Hārīta adds

682. भोगो वृद्धिदण्डपूर्व चकृद्दिग्ध दण्डो । नृत्वं च मोदन् पञ्चाङ्गायुषं  
नय नहि तम् । वृह० quoted by वि. वि. p. 6 which says द्विगुणाधिकद्विगुणं दृष्ट्वै-  
व द्विगुणं दण्डो मह मूलमैकीकृत्य मूलत्वेनैव तदुपहनं एतत्तपे निमित्तमिति दृष्टव्यम-  
न०. Vide p. 443 of दृष्ट. र. This verse occurs in वि. र. p. 14 which says that  
such actions are condemned, but if a Shylock insists on his agreement he  
can and does recover compound interest and so on: 'तद्व्यायुषं विमर्शितम्, अधर्माच्च  
तद्व्यायुषं न तु भोग्यापि न तच्छ्रमनेन एव तद्व्यायुषं तेनैवैकीकृत्योपयोज्यम्'. This shows  
that the ancient sages were quite alive to the hardships of debtors and the  
evils of exorbitant interest. They condemned usury as a greater sin than  
even the murder of a learned brāhmana. Vide Baud. Dh. S. I. 5. 93 and  
Vas. II. 40-42 quoted above on pp. 417-418.

683. कुसुद्विगुणं चर्मा विज्ञातिः पञ्चमायिकी मानम् । नौ. XII 26 : पञ्चमायस्तु  
विज्ञाता एव धर्मा न हीयते । वसिष्ठ II. 50 : धैर्यः कुसुद्विगुणं जीयते । पञ्चविंशतिर्यत्र पञ्च-  
मायिकी रचना । नौ. घ. सु. I. 5. 90-91 : दुराजपञ्चविंशतौ माने अहपणा पञ्चिः । एवं  
चक्रुर्भिर्माने चतुर्भिर्माने द्विगुणं मानं सन्ति दृष्टे । एषा धर्मवृद्धिर्नानया धर्मा रक्षयते । दारीत 9. by  
वृह० र. p. 447, which explains : दुराजमिति षोडशपणा पणं काकिणीचतुस्रपणम् ।  
Should we not read एवं सन्निगासकैः in the quotation from Hārīta? Gaut.  
and Vas. provide that five māṣas were the interest on 20 paṇas per month  
and if we are to suppose that they accepted the rule that 1/80 of the prin-  
cipal sum was the proper rate of interest (as ascribed to Vasiṣṭha by Manu  
VIII 140, Nār. IV. 99 and others), then the paṇa, acc. to those two, must  
be equal to 20 māṣas (i. e. 100 rakṭikāḥ); while acc. to Baud., the paṇa  
would be equal to 16 māṣas. When Hārīta says that 8 paṇas are the monthly  
interest on 25 purāṇas (which were silver coins and each of which weighed  
32 rakṭikāḥ) and that in 4 years and 2 months the interest on 25 purāṇas at  
8 paṇas per month came to be as much as the principal, it follows that a  
rakṭikā of silver was 40 times as valuable as a rakṭikā of copper (8 × 80 × 50  
= 32000 divided by 800). But this does not agree with what Śakra states  
(note 162 above). Probably the relative values of gold, silver and copper  
varied from age to age, according to the supply of some or all of these metals  
from foreign countries.

that double the interest stated above may be taken when there is nothing pledged to secure the debt. Yāj. and Vyāsa provide that this rate is the proper one when some thing is pledged or mortgaged by way of security. Yāj. II. 37, Manu VIII. 142 (= Nār. IV. 100), Viṣṇu Dh. S. VI. 2 provide an option that two, three, four or five per cent per month may be charged as interest in the order of the *varṇas*<sup>664</sup> (i. e. 2 per cent per month for a brāhmaṇa debtor and so on). Yāj. II. 37 allows these rates only if there is nothing pledged by way of security. Vyāsa<sup>665</sup> (in Par. M. III. p. 221) provided that the monthly rate of interest was  $\frac{1}{20}$ th of the principal lent when a pledge or mortgage was given as against the loan,  $\frac{1}{10}$ th when only a surety was offered and two per cent per month when money was lent on personal security. The Anuśāsanaparva 117.20 condemns to Hell those who take exorbitant interest. Kauṭ. prescribed (as stated in n. 688) fines for taking heavier interest than that allowed by him. Kāt. (498) provides that if a debtor himself stipulates a higher rate of interest than is allowed by the śāstra in times of difficulty (in order to induce the creditor to part with his money) that stipulated interest must be paid but a rate of interest imposed by the creditor otherwise (by force &c.) should not be enforced by the Court.<sup>666</sup> It is probable that these rates are specified because of the economic conditions of those times which proved too much even for the ancient sages or different mercantile usages about interest prevailed in different countries at different times, as expressly stated by Nār. IV. 105-106 that<sup>667</sup> these high rates (including eight per cent per month) had to be paid according to the law merchant in different countries. Manu VIII. 141 (= Nār. IV. 100) holds that to take two per cent per month (on unsecured debts) is not improper. In mediæval times also the rate of interest was rather high e. g. interest at 25 per cent is said to have been

664. विन्ध्यकण on या. II. 39 quotes a sūtra of Br. for raising the rate of interest according to the varṇa of the debtor (पादोपचयात्कर्मनेतरेषाम्).

665. सवन्धे भाग आसीत् दाहो भागः सप्तप्रके. निरापारे विक्रयने मासतम उच्चाहृतः. भास ७, in परा. ना. III. p. 221, अ. य. p. 227.

666. कणिकेन तु या वृद्धिरधिका संवकाशिता. आपत्कालकृता नियमे दाताया कारिता तु सा. अथवा कारिता वृद्धिर्न दाताया कथंचन. कारया 498 ७ by स्पुलिच. II. 154, कुल्लुक ०० मनु. VIII. 153, वि. १. p. 10. The वि. १. explains: कणिकेन तु संवकार्यतया आसीत्तमासद्विक्रयतादिकपवृद्धिकोपिका वृद्धिर्न दातायापिता सा कारिता सा च नेन देया. अथवा तेनाप्यवस्थापिता क्लेशेन स्वोकारितापि न देया.

667. या देशस्थितिरवस्था यवर्णमवतिष्ठते. द्विष्टुर्न विदुर्न अपि तथान्वयः चतुर्दशम्. सवाहसुसमवस्थितं देयं देशोपवतिष्ठते. नारद IV. 105-106.



charged on a deposit of six *paṇyāṇas* kept with the *mahājānas* of Śivapura ( vide Yawur Ins. in E. I. XII. p. 273 ). Yāj. II. 38 provides that those debtors who carry on trade by traversing dense forests and those who are sea-faring traders should respectively pay 10 per cent and 20 per cent per month and the Mit. adds that these exorbitant rates are allowed because of the great danger of the loss of even the principal as the debtors may perish by ship-wreck or from the attacks of robbers and wild beasts. Mamu VIII. 157 leaves the rate of interest in the case of seafaring merchants to those who are clever in these matters and who know the proper time and place. Kaut. ( III. 11 ) states<sup>688</sup> that the prescribed (*dharmaṃ*) rate of interest is 1½ *paṇa* per cent per month, but in transactions (or in commercial usage) it is five *paṇas* per cent per month ( as the highest, it appears ), that those who traverse forests and those who carry on maritime trade should pay respectively ten and twenty per cent per month, that those who exceed or induce creditors to exceed these rates should be punished with the first-amerccement, that each of the witnesses to such usurious transactions should be punished with half of the above fine.

Other rules laid down in the *smṛtis* relate to the maximum that can be recovered by a creditor from a debtor at one time. All are agreed that the creditor cannot recover at one time from the debtor for principal and interest more than double of the money lent. Vide Kaut. ( III. 11 ), Mamu VIII. 151, Gaut. XII. 28, Yāj. II. 39, Viṣṇu Dh. VI. 11, Nār. IV. 107, Kai. ( 509 ). This is called the rule of *dayanya*<sup>689</sup> in the *smṛtis* and of *dāṇdupat* in modern times. It will be explained in detail a little below. As regards the interest in kind on articles lent there is some difference of opinion, which need not be gone into in great detail. Mamu VIII. 151 and Gaut. XII. 33 state that on loans of grain, fruits, wool and beasts of burden, and products like ghee and milk had from cattle the total recoverable cannot exceed in any case five times of what is lent. Yāj. II. 39 states

688. सपाण्यया धर्मो मासद्वयः पणस्तस्य । पञ्चपाणाः पञ्चवारिकीः । दशपाणाः काष्ठारकाणाम् । विंशतिपाणाः सासुद्राणाम् । ततः परं कर्तुः कारापेतुश्च दुर्गः सप्तसङ्ख्यतः । श्रोतृणामेकैके मासपेद्वयः । अर्थशास्त्र III. 11.

689. चिरस्थाने द्वैमुल्यं प्रयोगस्य । मी. XII. 28; चिरस्थस्य वरा द्वयिर्द्विमुल्यं । विष्णुध. VI. 11; चिरस्थानः संसाम्यपविशे वा मूलपद्विमुल्यं दद्यात् । कौटिल्य III. 11; कुसीद्वद्विर्द्विमुल्यं नात्येते सकृदावृत्ताः । मनु VIII. 151. There is another reading सकृदावृत्ताः.

that in the case of cattle and female slaves when loaned their progeny is the profit, in the case of liquids (like oil and ghee) when loaned the maximum recoverable is eightfold and in the case of clothes and grain it is respectively four and three times. Vas. II. 44-47 says the maximum recoverable at one time in the case of grain, flowers, roots, fruits and fluids (like oil) is three-fold and eight-fold in the case of things that can be weighed. Vide Visnu Dh. S. VI. 12-15. Visnu VI. 17 (*unuktūnām dāṣṇā*) provides that where no special rule is laid down the maximum recoverable is to be only double of what is lent. Kāt. (570-572) states<sup>690</sup> that the maximum recoverable in the case of precious stones, pearls, corals, gold, silver, fruits, silk, wool is double of what is loaned; of oils, liquors, ghee, raw-sugar and salt and land eight-fold, of baser metals five-fold. Vide Br. (S. B. E. vol. 33 p. 322 verses 13-16) and V. Nīrṇaya p. 229 (quoting Bharadvāja) for similar provisions.

The rule of what is called *dāṇatupad* in modern times expressed laconically by Manu VIII. 151 and Gaut. XII. 28 is this that 'the amount of principal and interest recoverable at one time in a lump sum cannot be more than double of the money lent'. As a debt was recoverable not only from a man himself but also from his three descendants and as therefore there was practically no period of limitation for bringing a suit for money lent, creditors had great temptations to allow interest to go on increasing. Therefore the sages who condemned the profession of usury and particularly waiting long for the increase of interest<sup>691</sup> laid down that whatever the length of time during which the principal was at interest and whatever the rate of interest might have been, the creditor could recover by suit in a lump sum only double of the money lent. This acted as a great

690. मणिमुक्तापवातानां सुवर्णरजतस्य च । विद्वति विदुष्या दृष्टिः कलकैदाधिकस्य च । तैलानां चैव सर्वेषां मयानामथ सविधान् । दृष्टिरदृष्ट्या ज्ञेया दृष्टस्य तद्वनस्य च ॥ कुट्टये पञ्चमुप चूमिस्तथैवाष्टमुपा मताः । कात्या. q. in m. vi. pp. 228-230, vi. r. pp. 17, 19 (first two), sv. m. p. 170. The vi. r. p. 17 accounts for this divergence as follows: 'दृष्टस्तानि धान्ये चतुर्दशान्युक्ते विष्णुमरीचिमिश्रितानि च विदुषास्तमुक्तं तद्व्याधमर्णापकृतमुत्तममधमुत्तमस्तदुत्तमोत्तमस्य महाहर्षनानामधान्युक्तेः काष्ठद्वयमेवेन वा स्वयस्याः ।'

691. एवं च दृष्टिपरिमण्ये दृष्टिमुदले अधर्माधिक्यमतिव्याप्यम्, अतिविहाकार-त्वात् । अधर्मे तु कलाघटनमात्र एव विद्धा वाप्यधिक्यमाधमिनि निन्द्यात् । चिरस्थापने निरोधाविधानाच्च । शिवाह्वयम् p. 2.



check on the creditors' rapacity. Several propositions are laid down in the *Mit.*,<sup>692</sup> the *Vyavahāramayūkha* and other digests that graft exceptions on the general rule, and that flow from the interpretation of Manu VIII 151 in both readings. The first modification is that if interest is received every day, month or year and is not claimed in a lump sum at one time then the total interest received by a creditor may be even several times more than the principal lent. Br. provides (S. B. E. vol. 33 p. 321 verse 11) that every day interest or bodily interest and *phogalābha* may be taken by the creditor (irrespective of the question of *dhauṅgūpa*) as long as the principal is not paid<sup>693</sup>. (2) Further, if after the interest has accumulated for some time, there is a fresh agreement with the same debtor whereby the sum lent together with interest due is taken as the principal and interest is agreed to be paid on the amount so arrived at, then the total recoverable after this fresh agreement may exceed double the original sum lent. Manu (VIII 154-155) and Br. (S. B. E. vol. 33 p. 331 verse 60) allow such a fresh agreement. But if the debtor does not make a fresh agreement then the rule of *dāmdūpat* would apply. (3) If after the sum due to the creditor has become double of the principal lent, the creditor accepts another man as the debtor (who takes the liability on himself), then the creditor may recover from the substituted debtor after the lapse of years an amount which may be more than double of the sum originally lent. (4) If the debtor pays a part of the principal or if the creditor makes a concession (called '*śekā*' in the *Mit.* on Yāj. II. 39) and reduces the total recoverable or if the debtor receives an additional amount of money (called '*śekā*' in the *Mit.*) and it is added to the original amount borrowed and a fresh agreement is made between the parties to put the whole to interest, then the rule of *dāmdūpat* would not apply.

692. एवञ्च सङ्कल्पयोगे सङ्कल्पादित्ये च वेदितव्यम् । इदञ्चाभ्यस्तकर्मणो न प्रयोगाभ्यस्तकरणे तस्मिन्नेव वा इदमेव भवेत्कदाः प्रयोगाभ्यस्तकरणे सुवर्णादिकं द्वैमुपवाचयितुम् पूर्ववदधीते । सङ्कल्पप्रयोगेति प्रतिद्विषं प्रतिमासं माससंयमसरे वा इदञ्चादित्येऽधमर्णे देवस्य द्वैमुपवाचयितुम् पूर्ववद्वैमुदञ्च सप्त द्वैमुपवाचयितुम् वर्षेति श्रुत्वा । मिता. on वा. II. 39.

693. शिक्षादुर्द्धे कायिका च मोक्षार्थं तथैव च । यन्वी तावत्समावृथाद्यास्त्यस्यैव न शोधयेत् ॥ इह. १. by स्मृतिच. II. p. 161, बरा. मा. III. p. 230, विवादचन्द्र p. 2.

The rule of *dāmdupat* has been acted upon by the courts in India in modern times<sup>694</sup>. Though under the Transfer of property Act before its amendment in 1929 there was a conflict of decisions, since 1929 it is settled that the rule of *dāmdupat* does not apply to mortgages governed by the Transfer of Property Act. But the rule is so reasonable and human that the Deccan Agriculturists' Relief Act (XVII of 1879) has made (by sec. 13) the rule of *dāmdupat* applicable to all agriculturists as defined by the Act, whether Hindus or non-Hindus; and the Bombay Agricultural Debtors Relief Act (of 1939), sec. 42, the Madras Debt Conciliation Act (XI of 1936, sec. 16) do the same.

A loan has to be returned on demand if no time is fixed for repayment or on the expiry of the time (if one has been fixed by the parties) or when interest ceases on account of becoming equal to the principal (Br. in S. B. E. vol. 33 p. 328 verse 47). Interest stops when on the debtor offering to pay the loan the creditor refuses to accept it and the debtor deposits the money in the hands of a third person (Gaut. XII. 30, Yāj. II. 44). With Yāj. II. 44 section 84 of the Transfer of Property Act (IV. of 1882) may be compared. Vas. II. 49 states the remarkable rule that interest stops the moment the king dies and begins to run only after the coronation of the successor.<sup>695</sup> Nār. II. 39

694. *Vidya Balkrishna v. Gopal* 1, L. R. 1 Bom. 73 (where it was held that the rule of *dāmdupat* should not be extended to apply to the amount recoverable in execution of the decree of a civil court). *Nanchand v. Bapusaheb* 1, L. R. 3 Bom. 131 (held that the rule of *dāmdupat* does not apply when the defendant is a non-Hindu). *Gopal v. Gangaram* 1, L. R. 20 Bom. 721 F. B. (the rule is excluded from mortgages the terms of which necessitate the existence of an account between the mortgagor and the mortgagee in possession about the rents and profits). *Sundarabhat v. Jayawant* 1 Bom. L. R. 551, 553 (rule applies between all Hindu debtors and creditors both in respect of simple as well as mortgage debts). *Khinji v. Chaudhari* 31 Bom. L. R. 419 (by agreement interest which does not exceed the principal may be capitalized). It is interesting to find that in ancient Egypt the legal maximum rate of interest was thirty per cent. and it was forbidden to allow interest to increase beyond the double of the principal. Vide Wilkinson's 'Manners and Customs of the ancient Egyptians' (First Series), 1842, vol. II p. 50. Usury was condemned in ancient Egypt. among the Jews (vide Psalms XV. 5, Ezek. XVIII. 8 and 17, Lev. XXV. 36-37) and by the ancient Greeks (as more heinous than even the murder of a *brāhmana*, H. of Dh. vol. II. p. 124 n. 269).

695. राजा तु मृत्योरेव दायदृष्टिं विनाशयेत् । इवा राजाभिषेकेन दायदृष्टं च वर्धते । बसिष्ठ II. 49.



(S. B. E. vol. 33 p. 33) provides that no interest runs on the price of commodities, on wages, on a deposit, on a fine, on what has been idly promised (to bards and the like) and on the stake won in gambling, unless there is a special or express agreement to pay interest.<sup>696</sup> Kāt. (508) has a similar verse,<sup>697</sup> but adds hides, crops, liquor, bride-price and suretyship debts to some of those mentioned by Nār. Kaut. (III. 11) provides that no interest runs where the debtor is a person engaged in a Vedic sacrifice of long duration, or is suffering from a disease or is staying at his teacher's house (*gurukula*) for study or is a minor or is a man without any substance. As regards some cases where originally a thing is lent to a person out of friendship or because he asked a loan of it, Nār. (IV. 108) and Kāt. (502-505) lay down certain rules which are quoted in the Mit. (on Yaj. II. 38) and other works. Nār. (IV. 108) prescribes<sup>698</sup> that no interest ever attaches to things loaned through friendship, unless there is an express stipulation to that effect; but even in the absence of a stipulation interest starts running after the expiry of six months. Nār. IV. 109 and Kāt. (505) both lay down that a loan (of money or an article) made through friendship cannot begin to earn interest as long as no demand is made for its return. If the debtor refuses to return it after it is demanded interest begins to run at the rate of five per cent. Kāt. (502-504)<sup>699</sup> lays down three propositions about *yūcitaka* (a temporary loan of money or of an article): (1) When a person takes such a loan and goes to another country without

696. *यण्यमृत्युयं भुतिर्गोमो दण्डो यज्जावहारकम् । वृषादानाक्षिकपणा वर्धन्ते नावि-  
वक्षिताः ॥* नारद II. 36; *मिता. on वा. II. 38, परा. मा. III. p. 224, अ. म. p. 169*  
*read दण्डो यज्जावहारकम् वि. चि. p. 7 reads यज्जाविहारिकम्* (what is appropriated  
by fraud or force), *अवहारकम्* is translated by Jolly as 'what is abandoned  
by one and found by another' (S. B. E. 33 p. 33).

697. *चर्मसंस्थानवपुषे यण्यमृत्युये च सर्वदा । अक्षिप्लेबु न इष्टिः स्वाध्यातेषां स्था-  
वरेषु च ॥* कात्या. (508) q. by *स्वुतिच. II. p. 157, परा. मा. III. p. 225, वि. र. p. 20;*  
*दीर्घसंस्थानाधिष्ठुल्लोपवद्धं बालमसार् वा नर्ममनुवर्तेत ।* कौ. III. 11.

698. *न इष्टिः पीतिदुष्टानां स्वाध्याकारिता कश्चित् । अनाकारितमप्यूर्ध्वं वत्सरावा-  
हियते ॥* नारद IV. 108, which *स्वुतिच. II. p. 156* explains 'अनाकारिता अकृता ।  
पीतिदुष्टानां वसिष्ठाचनयतिदानद्विमनिर्देशाङ्गानामिति शेषः ।'. *पीतिदुष्टं तु वतिक्रिय  
वदधेयवद्विचिन्तम् । पाण्डमानमदुष्टं चैवर्धते यज्जके शतम् ॥* नारद IV. 109.

699. *यो वाचितकयादाय तमद्वाना दिवं वजेत् । ऊर्ध्वं संवत्सराक्षयं तद्धनं इष्टिमाप्य-  
यात् ॥ कृत्योद्धारमद्वया यो वाचितस्तु दिवं वजेत् । ऊर्ध्वं मासययाक्षयं तद्धनं इष्टिमाप्य-  
यात् ॥ स्वदेभेऽपि स्थितो वस्तु न दद्याथाक्षितः कश्चित् । तं ततोऽकारिता इष्टिमनिष्कृत्य  
च दापयेत् ॥* कात्या. (502-504) q. by *मिता. on वा. II. 38, वि. र. pp. 15-16,*  
*स्वुतिच. II. p. 156.*

returning it, that loan begins to acquire interest after a year from the date of the loan (though no demand be made); (2) if a person after taking a loan goes to another<sup>700</sup> country without returning it even when pressed by the lender to return it that loan begins to acquire interest three months (after demand); (3) when the borrower of a thing does not return it even though he is pressed to return it, the king should make him pay interest from that day (i. e. day of demand), though it was not agreed upon, though he remained in the country and though he be unwilling to pay interest. The Madanaratna says that in these cases where no interest is settled beforehand and where the texts do not specify the rate (as Kāt. 505-506 do viz. what is lent through friendship, a deposit, balance of interest, unpaid purchase money, if not returned on demand, begin to carry interest at five per cent per month), the rate of interest would be the one stated by Yāj. II. 37 (viz. 1/80th per month) and Viṣṇu VI. 4. (*akṛtūnāpi vatsarāṅkīramāṇa yathārahitaṁ*).

*Ādhi*<sup>701</sup> means pledge of a movable or mortgage of immovable property. Nār. IV. 117 remarks<sup>702</sup> that in lending money an *ādhi* and surety are the two sources that inspire confidence (in the creditor that his money will be safe) and a document and witnesses are the two modes of proof that will establish (the existence of a debt). An *ādhi* is so called because the creditor is authorised to wield power over it or it is placed within his power (Nār. IV. 124 and Mit. on Yāj. II. 58)<sup>703</sup>. The

700. Compare Viṣṇu Dh. S. VI. 4 with the first proposition. Pāṇini (IV. 4. 21) derives *yācitaka* (in the sense 'yācitena nirvṛttam'). In *Saundaryāṇḍya v. Shivabharata* 31 Bom. 354 Mr. Justice Chandavarkar translates (at p. 361) Nār. IV. 108 and Kāt. (502-504), discusses the explanations of these passages by the Mit. on Yāj. II. 38 and holds that these incidents are even now applicable to contracts of debts by Hindu debtors and that neither the Interest Act (XXXII of 1839) nor the Indian Contract Act affects the ancient Hindu Law. It should be noted that 31 Mad. 250 and 33 Mad. 249 at p. 579 dissent from this view.

701. For an illuminating discussion on pledges, vide Dr. Sen's 'Hindu Jurisprudence' chap. VI. pp. 176-206.

702. विश्वम्भदेव द्वावय मन्त्रिपुराणिव च । लिखित साक्षिणश्च द्वे प्रमाणे ऋक्षिकारके । नारद IV. 117.

703. आधिर्नाम युहीत्यय इत्यवयवपरि विश्वामार्थमयमर्थेनोत्तममोऽधिक्रियते आधीना इत्यधिः । यथाह नारदः—अधिक्रियत इत्यधिः—इति । मिता. on Nār. II. 58.



word *ādhi* occurs in Āp. Dh. S. I. 6. 18. 20<sup>704</sup> (which includes among those who are unfit to be invited at a *śrāddha* 'one who subsists on *ādhi*'). Gaut. XII. 29 also refers to *ādhi*. Kaut. (III. 12) briefly deals with *ādhi* and after stating some rules extends the principles of *upanidhi* (deposit) and debt to it. Manu VIII. 165 employs the word '*adhamana*' in the sense of 'mortgage'. According to Br.<sup>705</sup> (S. B. E. vol. 33 p. 323 verse 17) an *ādhi* is of four kinds viz. of movable property, of immovable property, *gopya* (to be kept in custody of the pledgee only), *bhogyā* (to be enjoyed). Nār. IV. 124 first divides *ādhi* into two sorts, viz. one that is to be redeemed within a certain time fixed (by agreement at the time of contracting the debt) or to be retained till the debt is paid off and Nār. IV. 125 again subdivides each of these two into *gopyā* and *bhogyā*. This latter division was known to Gaut. XII. 32 Manu VIII. 143, Yāj. II. 59, Kāt. (576). The subdivisions of *ādhi* are made from several points of view viz. the nature of the property, the form of the pledge, the mention or non-mention of a period and the evidence to establish it. The Mit. on Yāj. II. 58 explains<sup>706</sup> that the first kind of *ādhi* mentioned in Nār. IV. 124 contains the conditions that the money will be repaid at a fixed time and that if the money be not so paid at the time fixed the thing pledged or mortgaged will belong to the creditor. Yāj. II. 58 sets out three provisions viz. (1) when a time is fixed for payment, the thing pledged or mortgaged is lost to the debtor if the time fixed is allowed to pass without there being any repayment (whether it be an *ādhi* that is to be merely kept or whether it is one to be enjoyed); (2) but if no time be fixed the thing given as security is not lost

704. ये च श्रद्धमात्रीयन्ति । ये चाधिम् । भिषङ् । वार्षिकिकः । अथ. व. सू. I. 6. 18. 19-22. हरद्वज explains *आधि* here 'as rent of a house,' because *वार्षिकिक* occurs a little later. But that sense is very rare and besides hardly any *smṛtikāra* has condemned the letting out of one's house for rent. It is better to take *ādhi* as pledge or mortgage and hold that *vārdhusika* refers only to those who lend corn in order to take 1½ times as much (or more) after the rainy season as defined by Nār. IV. 110 quoted above (on p. 417).

705. आविर्बन्धः स्यात्कृतः स च मोक्षश्चतुर्विधः । जडम् । स्वाधरथैव मोक्षो मोक्ष-  
स्वधैव च । बृह. ५. ४५. नि. p. 233, अथ. न. p. 171; अधिकृत इत्यधिकः स  
चिद्वैद्यो द्वितीयः । कृतकालोपमेव च चतुर्विधोऽप्यतस्तथा । स तु द्विविधः मोक्षो मोक्षो  
मोक्षस्तथैव च । नारद IV. 124-25.

706. कृते काले आपादकाले एवाधिमन्त्राले दीपरोक्तवादी मन्त्रमाधिमन्त्रोक्तयोऽन्वया  
तवैवाधिमन्त्रोक्तौ । एवं निरूपिते काले उपमेयः आत्मसमीपं नेतव्यो मोक्षोऽथ इत्यर्थः ।  
देवं दानं त्वेवमविकल्प्य पापदेवमुद्यतो निरतः स्वाधितः इत्यर्थः । पापदेवमुद्यतो  
पापदेवोद्यतः शरीरधनमापदेषां च धिरानिर्वापितकाल इत्यर्थः । मिता on वा. II. 58.

to the debtor at all, when it is an *ādhi* that is to be enjoyed; (3) if no time is fixed and the *ādhi* is only to be kept (*gopya*) then it is lost to the debtor only if it is not redeemed even when the debt has grown to double of the principal by non-payment of the interest agreed upon. There is a period of fourteen days' grace after this, as stated by Br. (S. B. E.<sup>707</sup> vol. 33 p. 324, verses 27-28) that when the principal has been doubled or the stipulated period in the case of a pledge delivered for a certain time only has expired, the creditor becomes the owner of the pledge, after waiting for a fortnight during which the debtor may repay the debt and redeem his property. Gaut. XII 29, Manu VIII 143, Yaj. II 58, Viṣṇu Dh. S. VI 5 provide that an *ādhi* which is mortgaged with the condition that the fruit or profits are to be enjoyed bears no interest nor can the creditor, even after keeping such an *ādhi* for a long time, make a gift of it or sell it. Medhātithi on Manu VII 143 holds that a mortgagee with possession who is to enjoy the produce cannot, by virtue of the last quarter of Manu VIII 143, make a sub-mortgage (called *amādhī*). Kullūka on<sup>708</sup> the other hand says that it is common practice in all countries for a mortgagee to execute a sub-mortgage of land and the like and that Manu VIII 143 does not forbid it. Prajāpati<sup>709</sup> (q. by Par. M. III p. 242) defines a deed of sub-mortgage: 'if the creditor pledges to another the thing already pledged to him for the same amount (for which it was pledged to him) he should pass a fresh deed of pledge (or mortgage) and should hand over the former deed to his own creditor.' It appears that sub-mortgages came to be recognized rather late. Bharadvāja states that if a sub-mortgage be effected without the mortgagor's consent, the mortgagee would lose his money.

707. हिरण्ये द्विगुणीयते पूर्वे काले कृतारणेः । बन्धवारप धनी स्वामी हिंससाहं परितप  
च । तद्वतरा धने द्रव्या कणा बन्धमवाप्नुयात् । सुत्र. १. by मित्रा. ०० ना. II, 58.  
Compare the description of mortgage by conditional sale in sec. 58 (c) of  
the Transfer of Property Act (of 1882).

708. अत इह निसर्गोऽन्यथापानं विक्रयसाहचर्यात् । मनुष्यो हि नो केनचित्पुंशेन ।  
मेधा- ०० मनु. VIII, 143: मेधातिथिर्मेदिन्द्राजो न आधेभिरकालेऽपरधानेपि न निसर्गो  
नात्मन बन्धकेनार्थमिति स्वाचक्षते । अथ तु सर्वदेवीपसिद्धाचारविरोधः, बन्धकहित-  
भूत्वादेरन्वधानात्प्रसन्नाचारात् । कुल्लूक ०० मनु. VIII, 143.

709. धनी धनेन तेनैव परमापि नयेद्यदि । कृत्वा तदापि लिखितं पूर्वं चारप सम-  
पेक्ष ० प्रमापति १. by स्वामिन्, II, 143, परा. ना. III, 242, स्व. न. p. 26; 'अथ  
आन्वाधिर्धनस्य द्वैतुपे सति संयतिपत्तौ तु द्वैतुपदाद्वर्धमाने ब्रह्मणः' परा. ना. III, p. 242;  
स्वामिना आनन्दज्ञात आपेरापि करोति चेत् । स्वधनज्ञात तु हीनः स्वात्करोतापदि पूर्ववत् ०  
मध्याज ०० म. वि. pp. 234-235.



The general rule was that an *ādhi* (whether of movable or immovable property) that was *bhogya* carried no interest but the profits were to be taken in lieu of interest (vide Kā. 516)<sup>710</sup> and the debtor would in this case get back his property on paying the principal. Kaut. (III. 12) states<sup>711</sup> that immovable property mortgaged may be such that it can be enjoyed only by expending labour over it or without expending one's own labour the creditor may enjoy the fruits or income thereof. But as noted by Vyāsa and Bharadvāja<sup>712</sup> the stipulation about a *bhogya ādhi* may be that the income from the property is to be taken as in payment of the whole interest and part of the principal. This latter is called *supratyaya-bhogyādhi* and the other variety where the income is taken in lieu of interest only is called *apratyaya-bhogyādhi*. The Mit. on Yāj. II. 64 after citing a text of Bṛhaspati refers to these two varieties (though it does not use these terms) and adds that if the income is not sufficient to meet the interest wholly then the debtor may have to pay the principal and the unpaid part of the debt before redeeming his property. The Mit. (on Yāj. II. 64) states that the appropriate name 'ksayādhi' is given by the people to what is called (above) as *supratyaya-bhogyādhi*. Bharadvāja states that on taking an account (where there is an agreement to apply the income towards interest and reduction of the principal) if the creditor has been overpaid he is to restore the overpaid amount to the debtor and that if a portion of the principal remains unpaid the debtor has to repay it.

If a man first mortgaged his property and then sold it, the purchaser took it subject to the rights of the mortgagee (Vasistha quoted by Sm. C. II. p. 145). If a person executed a mortgage, a sale and a gift of the same thing on the same day, then the

710. इयं वृत्तिरा वृद्धवर्ध भोगयोगं ददाति चेत् । तद्धनं स्वार्कं वापि भोग्याधिः स तु कल्पते ॥ मूलं तद्विलं दत्ता स्वोच्चादिकमाप्नुयात् ॥ कात्या. 516 q. 6y अथ, नि. p. 242, स. नि. p. 234, which says that this is अमरवर्धभोग्याधि.

711. स्वाधस्तु त्वाप्तभोगः कलभोगो वा । कौटिल्य III. 12.

712. अथ भोग्यो द्विविधः सप्रत्ययभोग्याधिः अप्रत्ययभोग्याधिर्येति । सवृद्धिकः मूलपायाकरणाधो वा स सप्रत्ययभोग्याधिरित्युच्यते । वृद्धिमात्राकरणाधो वा सोऽप्रत्ययभोग्याधिरित्युच्यते । तत्र सप्रत्ययभोग्याधिमहत्त्वं ज्ञातः । कश्चिद्वृद्धिं समाभास्य इत्यभादाय तत्रातः । मत्तेनैव मूलं वृद्धवर्धमधिकं मूलनाशनम् । इत्याधिः प्रत्ययधिः स्वाद्वैवर्धने निष्कयो भवेत् । ... अथ मरहताः । ... यत् त्वाधिकं वृद्धेर्देवं तदुच्यते इत्यः । श्रीनं पावत्तु वृद्धे तत्रात्मवृद्धेऽपी ॥ स. नि. pp. 233-234 ; vide अथ, नि. pp. 242-243 from which S. V. appears to have borrowed.

donee would take one-third of the thing and the mortgagee and purchaser would share the remaining two-thirds in proportion to the money paid by each<sup>713</sup>. If a person was liable to pay several debts, some secured by a pledge or mortgage and some taken on personal security, the latter were to be paid first and redemption of the mortgage was to be ordered afterwards, according to Bharadvāja ( q. by Vy. Nir. p. 245 ).

The restriction that more money should not be taken from the sub-mortgagee than what was advanced to the mortgagor was for the benefit of the latter. The Par. M. ( III. p. 242 ) provides that a sub-mortgage can be made only when the amount due has risen to double the principal, but that if the owner consents a sub-mortgage may be made even before that contingency arises.

Kāt. ( 522 ) requires that an adhi becomes valid when such particulars as the boundaries of the field or house and the village ( in which it is situated ) are specified<sup>714</sup>. Kāt. ( 518 ) further provides that a writing of pledge or sale or gift is superior to a similar transaction made in the presence of witnesses only. If the same field or other thing is mortgaged or pledged to two persons separately, Viṣṇu Dh. S. V. 185<sup>715</sup> and Br. ( S. B. E. 33 p. 326 verse 34 ) prescribe<sup>716</sup> that the one who got possession first ( without force ) is entitled to preference. This shows that under ancient Hindu Law possession was nine points of law and that hypothecation without delivery of possession was known to Kāt. and other smṛti writers, even if earlier smṛtis did not recognise an hypothecation without possession. Yāj. II. 60 and Nār. IV. 139 emphatically assert that a pledge or mortgage becomes perfect or effective only if there

713. सै पूर्वजरमाधाय विक्रीणामि तु तं पुनः । किमेतयोर्द्वौपः स्यात्प्राक्तने वतप-  
नसम् ॥ कुतं यवैकद्विपसे दायाधमनविकपम् । उवाणामिति सम्पदेहे कयं तत्र विचिन्तयेत् ।  
ययोपि तद्वनं धनं विमलेर्जुपयांशतः । उभौ किराजुमारेण विभागेन वसिष्ठः ॥ इति । वसिष्ठ  
q. by स्मृतिच. II. p. 145, स. वि. p. 238-239; Br. quoted by both has  
similar verses.

714. मयावृत्तिर्हितं क्षेत्रं सुहं वापि वदा भवेत् । ग्रामादप्यथ लिख्यते तदा सिद्धि-  
माप्नुयात् । कात्या. q. by स. वि. p. 236. Compare sections 21 and 32 of the Indian  
Registration Act.

715. ययोर्निशित आधिरतौ विक्रदेतां वदा नरो । वरय मुक्तिः फलं तस्य भगताकारं  
विना कुतः ॥ विष्णुधर्मसूत्र V. 185; परा. मा. III. 233 reads जयं for फलम्.

716. क्षेत्रमेकं द्वयोर्बन्धे वदन्ते समकालिकम् । देन मुक्तं भवेत्पूर्वं तस्य तत्सिद्धिमाप्नु-  
यात् । सुह. q. by परा. मा. III. p. 233, स्मृतिच. II. p. 144; vide a similar verse of  
वसिष्ठ quoted in श्र. स. p. 173.



is enjoyment and not otherwise. This is to be taken along with Yaj. II. 23 and so the first in time shall prevail only if the first is accompanied with possession. If a sale or mortgage be made before witnesses to one man and in writing to another, the latter prevails over the former<sup>717</sup>. If a debtor were to pledge or mortgage the same thing to another after pledging it to one and without redeeming the first debt, Viṣṇu Dh. S. (V. 181-182) prescribed<sup>718</sup> the drastic measure of corporal punishment (whipping or imprisonment) if the land mortgaged was a *gourma* or more in extent or a fine of 16 *sauvarnas* if it was less. Kat. (517) in similar circumstances made the debtor liable to the fine imposed on a thief. Kat. (519-521 q. in Sm. C. II. pp. 144-145 and V. P. pp. 240-241) states that in a competition between a document of pledge which does not give particulars of the thing pledged or which refers to a thing not existing at the time and a document in which the thing pledged is described with particulars or in which the thing existed at the time the deed was executed, the latter is entitled to preference; similarly the pledge of a thing specifically described is superior to a prior pledge of all the debtor's property mentioned in general terms.

If an *ādhi* deteriorates<sup>719</sup> in value (i.e. becomes inadequate to meet principal and interest) or if it be lost or destroyed though proper care be taken thereof by the creditor, then the debtor must either pledge another adequate thing (in substitution) or the debtor should return the amount due (Yaj. II. 60, Kat. 524). The Mīl. on Yaj. II. 60 remarks that it follows from this that it is the duty of the pledgee to take proper care of the thing pledged. Br. (S. B. E. 33 p. 323 verse 19) expressly says

717. आपानं विक्रयो दानं लेखपत्रावप्यकुर्वन् यदा । एकस्मिन्प्राविशद्द्वे तु लेखे तत्राप-  
हारकम् ॥ कात्या. (518) q. by पद्म. वा. III. 235; स्मृतिच. II. p. 144, म. वि. p. 237.  
Compare Kat. 518 with sec. 48 of the Registration Act which provides that  
a document relating to movable or immovable property shall prevail over an  
oral agreement or declaration unless the latter is accompanied or followed  
by delivery of possession.

718. बोधर्ममात्राधिको बुधर्मवन्तर्गाधीकृतो तस्मादनिर्मेयमान्यस्य वा यथच्छेत्त  
यस्य । अतो चेत् बोधस्तुवर्गात् दण्ड्यः । विष्णु. V. 181-182. बोधर्म is variously defined:  
समस्तोत्तम दण्डेन विंशत्युत्तम निवर्तनम् । द्वां तस्येव बोधर्मं द्वाभ्यां स्तर्गे ऋणवते ॥ बृहस्पति-  
स्मृति ॥ q. by मित्रा. on वा. I. 210 and अपराकं p. 367; विष्णु. V. 183 एकोऽस्तीयाह  
बुधत्वम् नतः संप्रसारं कृतम् । बोधर्ममात्रा सा बोधी स्तोका वा यदि वा पङ्क्तिः ॥ Vide also  
पराशर XII. 49. बुद्धिगोतन p. 339, अपराकं p. 1225 for other definitions.

719. आधीकृतं तु पक्षिचिह्निकं वैवराजकः । हर्षणं सोऽप्यं दाप्यो धनिनामधर्मिकः ॥  
न चेद्भूमिकदोषेण निपेदेद्वा क्षिपेत् वा । आधिमन्यं स दाप्यः स्वादिपायान्भवेत् नृणाम् ॥  
कात्या 523, 524 q. by स्मृतिच. II. pp. 137, 138, वि. र. p. 26-27.

that the pledge has to be kept carefully like a deposit, as otherwise interest is forfeited in case of its being damaged. If a pledge which is to be kept only is enjoyed by the creditor, then the interest stops and if it deteriorates or is lost the creditor has to restore it to its former condition or substitute another of equal value; if a pledge to be enjoyed is lost or deteriorates by use then also the interest stops; and the creditor has to restore it, otherwise he will lose his principal (Yāj. II. 59 and the Mit. thereon, Nār. IV. 125, 127). If a pledge is lost without any fault or negligence of the creditor, but through fate (i. e. accidents like fire or flood) or the action of the king, the debtor has to furnish another pledge or to pay the amount due (Kāt. 523, Nār. IV. 126, 130, Yāj. II. 59, Visṇu Dh. 8. VI 6, Gaut. XII 39, Br., S. B. E. 33 p. 323 verse 211. From the time of Gautama<sup>720</sup> (about 500 B. C.) onwards the rule about the care required of a pledgee, bailee, depositee was the same viz. that he is to take of another's property kept with him as much care as he would take of his own. Nār. (*nikṣepa* 14) and Yāj. II. 67 lay down the same rule for all kinds of bailments. Manu VIII 189 (= Nār., *nikṣepa*, verse 12) illustrates what is meant by accidental loss.

The debtor cannot redeem the pledge or mortgage before the time fixed by mutual agreement, but by mutual agreement he can redeem even before (Br. S. B. E. p. 325 verses 32-33). If the creditor does not allow redemption when the debtor has a right to redeem and is ready to do so, the creditor may be liable to be fined as a thief (Yāj. II. 62). Acc. to Kāt. (III. 12) the fine is 12 *papas*<sup>721</sup>.

It has already been stated above (p. 429) that in certain cases (i. e. when it is a *gopya dāta*) the ownership is lost to the mortgagor (i. e. in the language of modern law there is a foreclosure), if the amount has risen to double of the money lent without payment (even after the period of grace) or if the period fixed has passed away without there being repayment (whether the

720. निष्पन्नाधिपक्षितावकीराधयो नृणाः सर्वाननिन्दितान्पुरुषापरार्थेन । शौ. XII. 39, on which हरद्वज says: पुरुषापरार्थस्तु यदि धारयितारः स्वद्वयपक्ष रक्षयेत्, यथा-दिनयादौ स्वद्वयं यदीत्या निष्पाद्येतेत्येव स्वद्वयं वा दुर्गे मितान् बहिर्निष्पादि रक्षयेत्तुः । एतस्मिन्पुरुषापरार्थे मति द्युतेर । देवराजोपघातेन यदि नक्षत्राणामुपगतं । महीदुर्गपक्षेन तत्र द्रोणे न विद्यते । बृह. १ by स्मृतिच. II. p. 179. पक्ष म. p. 192; अत्रानर्द्धविकेतापि निश्चितं पक्ष नास्तिनर । महीदुः सह भाग्येन द्वागुण्यं ननुव्यते । कात्या. १ by स्मृतिच. II. p. 179. Compare sections 151 and 152 of the Indian Contract Act, where the same propositions about the care to be taken by the bailee are laid down.

721. उपरिबतस्त्राधिपक्षपच्यतो द्वावृक्षपक्षो वृष्टः । अपेक्षा III. 12.



amount has risen to double of that lent or not, acc. to Mit. on Yāj. II. 38]. But if at the time of contracting the debt the stipulation is to repay the sum lent with interest and there is no stipulation about loss of the ownership of the thing mortgaged (i. e. it is like a simple mortgage of modern times), then there is no loss of ownership. There is then only a power of sale in the mortgagor. So also in the case of a *bhogyādhi* the mortgagor or his heirs can redeem the property at any time by paying the principal and there is no loss of ownership to the mortgagor. According to Yāj. II. 63 and Br.<sup>722</sup> (S. B. E. vol. 33 p. 325 verse 29) the creditor can sell in the presence of (the debtor's relatives) and witnesses the *ādhi*, when the amount has grown to double of that lent or when the period fixed has passed, if the debtor has not redeemed and is absent or dead. After meeting his own dues the creditor has, as said by Kat. 529, to hand over the balance of the sale price to the king (i. e. probably to the court of the locality). Kant<sup>723</sup> (III. 12) provides that if the debtor is present and the creditor is afraid of the loss of his money because it may exceed the market value of the *ādhi* he may sell it with the permission of the judges (*dharmaṣṭha*) or he may demand a surety for assurance. It appears from these passages that a sale through court and a right of private sale were both recognised in the case of mortgages in ancient India (as in modern times under sections 65 and 69 of the Transfer of Property Act).

There were two other special kinds of *ādhi* described in Yāj. II. 61 viz. *caribāṇadhika*<sup>724</sup> and *satyadhikāra*. The first

722. विरत्ये द्विगुणीकृते कृते नष्टेऽपमर्दिष्टे । द्रव्यं तदीयं संश्लेषं विक्रीयति ससाक्षिकम् ॥ कुट्ट. q. by १७, म. p. 174, परा. मा. III. p. 240 which remarks 'आधीकृतं द्रव्यं ससाक्षिकं विक्रीय कणादल्पं द्विगुणीकृतद्रव्यपर्यंतं कृतीतं ततोऽपमर्दिष्टं वसतेत्' । राज्ञे समर्पयेद्विरत्यर्थः । विना धारणकाङ्क्षां विक्रीणीति ससाक्षिकम् । वा. II. 63, धारणकाङ्क्षानर्थाद्विना । मिता.

723. धारणकसंस्थिधाने वा विनाशमवाकुर्वतां धर्मभाद्रज्ञानो विक्रीणीति । अधिपाल-कारणे वा । अर्थशास्त्र III. 12. Acc. to the Sm. C. II. 130 *ādhipālā* was a surety in case of *bhogyādhi* (quoting पितृमहः) । राजस्वस्य वा विक्रयार्थो विक्रेय इति धारणा । महाद्विकं कृतीत्यर्थे सत्यध्यायेत् ॥ कारणा. q. by अवरार्ण p. 638, परा. मा. III. p. 241. स. वि. p. 243, विधावृत्तम् p. 9. तदा तु न सकुरुषाः स्रुतं च सम्पत्तिवशाधत्तः । तदा वृथा द्विनातिपद्येत्सत्यध्यायः । निक्षिपत् ॥ नारद IV. 113. तथा च संश्लेषकारः । ... शुभादिभ्योऽप्याग्नानां रिक्तधर्माज्जन्मभवे ।। पलाशस्य पलाशेन सुतुष्टान्तरपदेन तु । वक्तुमीद-मिति मार्येदप्याज्येन वक्तुम् ॥ स्मृतिच. II. p. 197.

724. चरितवन्तकृते सत्यध्यायादावपेक्षम् । सत्यध्यायकृते द्रव्यं द्विगुणं नतिवाद-येत् ॥ वा. II. 61, on सत्यकारकृत the मिता. says: सत्यस्य कार्यं सत्यकार-कारे सत्यागद्वय इति सूत्रं । सत्यकारेण कृते सत्यकारकृतम्. Two meanings are given of चरितवन्तकृतम् and सत्यकारकृतम्. 'कारे सत्यागद्वयः' is दायिनि VI. 3. 70.

occurs either when the creditor being known to be very honest the debtor gives as security a property of very great value for a small debt or where a debtor being known to be very honest a property of very small value is accepted as security for a large debt. In such a case there is no forfeiture or foreclosure of the property in any case but the king (or judge) should award only double the principal lent. Another meaning is that in a *caritrabandhaka* it is the merit (*apūrva* or *punya*) arising from bathing in the Ganges or from performances of *agnihotra* that is given as security (i.e. he will forfeit merit on non-payment). In this case the creditor will receive double and there is no loss or forfeiture of *ādhi*. A pledge made with *satyankāra* occurs when at the time of making a pledge the stipulation is 'I am liable to pay only double but there will be no loss of the thing pledged' or (a second meaning of) *satyankāra* is that 'when an earnest (a ring or the like) is given at the time of a sale and the vendor breaks the promise he has to pay double of the earnest'.

If the mortgagee is dead or absent abroad, and the debtor wants to redeem he may take back the *ādhi* after paying the amount due to the family i.e. to his sons and other agnatic relations or to his cognates and in the absence of these (if the creditor be a *brāhmaṇa*) to other *brāhmanas* (and if no *brāhmanas* be available) he may cast the money into water (Yāj. II. 62 and Nār. IV. 112-113). The Kauśika-sūtra<sup>725</sup> (46. 36-40) contains provisions about casting the debt in the cemetery or where four roads meet if the creditor is dead and there are no heirs. The Saṅgraha says that it may be thrown into water with a palāśa leaf to the accompaniment of Tai. S. III. 3. 4. 1-2 quoted above (n. 671). Another alternative is that the debtor may have a valuation of the *ādhi* made at the time when he wants to redeem (and the creditor is absent), and allow it to remain with the creditor but without interest (and redeem it at the valuation when the creditor comes or secure the price from the creditor if the *ādhi* be afterwards lost or destroyed, acc. to Mh. on Yāj. II. 63).

*Pratibhū*. A *pratibhū* or *lagṇika* (Br. quoted in n. 681 and Kat. 530) means 'surety'. *Pratibhūya* (being a surety) was known to Gautama (XII. 38) and *pratibhū* was known to Pāṇini

725. उत्तमर्णे शुने तद्वप्रापय दधन्त्यसि । सगोवाय । इमंशाने निवसति । चतुष्पदे च । कक्षागादीपयति । कौशिकसूत्र 46. 36-40.



(II. 3. 39). Suretyship requires the concurrence of three persons viz. the creditor, the borrower (called the principal debtor) and the person who agrees, for inspiring confidence in the creditor<sup>726</sup>, to pay or indemnify if the principal debtor commits default. Manu VIII. 160 speaks of surety for appearance and for repayment of debt. According to the purpose of the transaction a surety is of three kinds (Yāj. II. 53 = Viṣṇu Dh. S. VI. 41 and Nār. IV. 118) viz. for appearance, for payment and for honesty. The first undertakes to produce a person before a court and assures the court that the person concerned will not abscond from the country; the surety for payment agrees that in case the debtor does not pay the principal and interest, he will himself pay both; the surety for honesty assures the employer or other person with whom another man deals that the latter is an honest and good man, that he would not deceive and that reliance may be placed on him (vide Mh. on Yāj. II. 53 and Sm. C. II. p. 148 for these explanations). Br. (S. B. E.<sup>727</sup> vol. 33 p. 327 verses 39-40) speaks of four (including the three of Yāj. II. 53), his fourth being one who promises to deliver or restore the assets that are with the debtor (such as household furniture or ornaments). Yāj. and Nār. must be deemed to include this last under the surety for payment. Kat. (530)<sup>728</sup> says that a surety (*lagṇaka*) may be caused to be given for repayment (of a debt), for appearance (*upasthāna*), in lawsuits, for honesty and for taking oaths (or ordeals). Acc. to Hārita a surety is taken for five purposes viz. for keeping the peace (*abhyaya*),

726. यतिभास्यं नाम निश्चयायै ब्रह्मचर्येण सह समयः । निज. on Yāj. II. 53, 14, a. p. 247.

727. दृष्टेने प्रत्यये दाने अणिद्वयार्पणे तथा । अणुचकार पतिषुः आने इहो मनी-  
निभिः ॥ आहोको दृष्टेयमीति मायुरिषपरोक्षीत् । दत्ताहमेतद्द्विषामपेयमीति चापरः ॥  
बृह. q. by अपराधं p. 655, स्मृतिच. II. p. 148 and म. n. p. 247.

728. दानोपस्थाननिश्चयनिषादअपराध च । लग्नं दायपदेन यथायोगं विप्रये ॥  
कारण. 530 q. by अपराधं p. 655, परा. म. III. 249, स. वि. p. 247. When a  
special oath or ordeal was to be taken or undergone at some future date, a  
surety was taken from the party. A surety was also to be taken from both parties  
to a litigation (Yāj. II. 10). अमरे वापदे दाने उपस्थाने प्रदर्शने । पञ्चसेन पकरेदु  
दामो हि अतिपूर्वये ॥ हारीत q. by स्मृतिच. II. 148 and म. n. p. 248: 'उपस्थानमत्र  
वन्धनार्पणमभिमतं न दर्शनम्, तस्य स्वपदेनैवोपायकत्वात्, पञ्चसिखपदवापदत्वाच्च । स्मृतिच.  
All the above kinds of sureties are taken in modern civil and criminal pro-  
ceedings. Vide sec 145 of the Civil Pro. Code (for sureties for the perfor-  
mance of a decretal order or repayment of money ordered by a Court to be  
paid, for restitution of property taken in execution), sec 55 (4), Order 23  
rule 1, Order 38 r. 3, Order 41 rules 5 and 10 of the Civil Pro. Code and  
Cr. Pro. Code, chap. VIII, sec. 426, 429 &c. in criminal matters.

for honesty, for repayment of debt, for delivering the debtor's property to the creditor, for appearance. V. P. p. 248 quotes Vyāsa (who mentions seven kinds of sureties) and remarks that all can ultimately be reduced to three varieties.

If the surety for appearance cannot produce the person at the time and place agreed upon, he should in that case pay to the creditor what he has bound himself to pay except where the debtor is prevented from appearing by act of God or of the king. But a period of a fortnight, a month or three fortnights at the most should be allowed to the surety to find out the absconding person<sup>729</sup>. If he can produce him within that time the surety would be free from liability (Kat. 531, 532, Br. in S. B. E. vol. 33 p. 327 verse 42). If the surety for appearance cannot (even after time is given) produce the debtor or the debtor dies then the surety has to pay from his own pocket the money due from the debtor (Manu VIII. 158 and Kat. 532-33). All this is subject to the proviso of the act of God or of the king.

Sureties of all kinds are personally liable to make good the loss arising from the non-appearance of the debtor, or from his dishonesty or non-payment (Yāj. II. 53, Vāp. VI. 41, Br. in S. B. E. 33 p. 327 v. 41); but the sons of the surety for appearance or honesty were not liable, if the surety died<sup>730</sup>. Yet if the surety for appearance or honesty stood surety only after taking some security from the debtor for so doing, then even the son would be liable to reimburse from such security the person losing. The liability of sons and grandsons for the suretyship debt of the father or grandfather will be discussed a little later on. If there are several sureties, then each will have to pay a proportionate part of the debt; but if each of the sureties has undertaken the whole liability of the debtor (i. e. if the liability of all is joint and several) then the creditor may at his will recover the whole debt from any one of the several sureties

729. नष्टस्यान्वेषणे कालं दद्यात्पक्षिद्वये षमी । देवानुष्णतः पक्षे मासं सार्धंमध्यादि वा ॥ बृह. । नष्टस्यान्वेषणार्थं तु द्वेयं पक्षद्वयं दद्यात् । पक्षसी दुर्गमिषम्य ओतकपः पक्षिद्वयेवेत् । काले षतीति अतिपूर्वेदि तं तैत्र दुर्गमिष । स तमर्थे यदाप्यः स्वात्थेनैव विधिः स्मृतः ॥ कारत्वा, both q. by स्मृतिच. II. p. 149, ऋ. व. p. 249, मित्ता on वा. II. 57.

730. आद्यौ तु वितथे द्वाप्यौ तत्कालाद्येद्विजं धनम् । उत्तरी तु विमेषादे तौ विना तन्वृत्तौ तथा ॥ बृह. q. by स्मृतिच. II. p. 150, ऋ. व. p. 250: दृष्टीना यम्यकं यम दृष्टीगिरय स्थितौ भवेत् । विना पित्रा यम्यममनादाप्यः स्वात्थेनैव सुतः ॥ कारत्वा 334 q. by मित्ता on वा. II. 54, अपराकं p. 656, ऋ. व. p. 251.





dated *sahast* 1198 (1141-42 A. D.) this practice is called *kāya-vrata* (*yadi brāhmanah kāyavratam kṛtā mṛigade*). Vide E. I. vol. XI p. 37 at p. 40. These modes of recovery except *vyavahāra* are explained by Bṛhaspati as follows: <sup>731</sup> The method of *dharma* consists in sending messages (to the debtor) from his friends and relatives, in persuading him to pay with sweet words, by following the debtor (i.e. by persistent dunning) and by frequent requests. *Trick* consists in the creditor borrowing from the debtor some ornament or other article under the pretext of its being required in a festival and not returning it or in retaining what the debtor has handed over to the creditor for being delivered to another; that is compulsion when the debtor is brought to the creditor's house, is then confined or beaten and thus induced to repay the debt; that is *accusis* where the creditor keeps tied his own wife or son or cattle at the debtor's house or sits down at his door (fasting). All these methods could not be employed in the case of all debtors. Kāt. (477-480) has already been cited (on p. 383) to show how the king is to employ the various methods in the case of brāhmanas, traders &c. If the creditor employs any one of the methods (other than *vyavahāra*) and harasses a debtor when the latter claims judicial investigation and there is a doubt or dispute between the two as to the amount, the rate of interest, the liability to pay, the creditor would lose his claim and would have to pay a fine equal (to the claim) <sup>732</sup>, Kāt. 589 and Br. <sup>733</sup> (S. B. E. vol. 33, p. 331 verses 63-65) lay this down. But when the debtor admits his liability and yet does not pay and when the creditor therefore employs one of the means (other than a suit) appropriate to the caste and position of the debtor, then, if the debtor complains to the king

733. अतिपन्नपूर्णे दापकः सामाविभिन्नकर्मैः । धर्मोपविशलात्कारैश्च सरोपमेव च ॥  
सुहृत्सकान्धिसन्दिग्धैः सामोक्तपात्रपुत्रेभ्यः च । मयेण वा यक्री दापको धर्म एव उदाहृतः ॥  
उपक्रान्ता वाचिते चाधर्मासीथ अनिकादासी । अन्त्याहिलादि साहच्य दापकते नम सोपधिः ॥ यदा  
स्वयुक्तानीथ साहचर्यैवधर्मैः । अणिको दापकते यथ यदात्काप स कीर्तितः । दापकपक्षेण  
यद्वत्सा कुत्सा दारोपदेशम् । यक्री दापकतेऽर्थे स्व तदाचरितमुपपत्ते ॥ बृ. q. 6y स्मृतिच-  
II. p. 164, यसा. मा. III. p. 255-256, कुल्लूक on मनु VII. 49, य. २, pp. 256-257.

734. न रोक्ष्यः क्रियावादी सन्दिग्धोऽर्थे कथञ्चन । अनेपदेशनासेनैव दुष्टयो भवति  
यमतः ॥ यदाकर्णं नद्वयति व्यापनसहदाग्यम् । एवं यक्रीको भवे क्रियावादी स उपपत्ते ॥  
अपमकवादितामेव यथ आनिर्धपोमेव । देवानादेवपोकंति सन्दिग्धोऽर्थः स कीर्तितः ॥ अना-  
वेय इ राज्ञे यः सन्दिग्धोऽर्थे यवते । यमस्य स हितेयः स्वाप्त व्यापनो न निरपत्ति ॥ बृ. 10  
स्मृतिच. II. p. 166, य. २, pp. 259-260.

735. योहदेवो धनी काबिदणिकं स्वावसादिनम् । यमस्यद्वयोस दीपेन तामसं व्यापुपा-  
दमम् ॥ कात्या. 569, q. 6y मिता. on वा. II. 40, अथरास p. 645, य. २, p. 260.



against the creditor, the debtor would be compelled by the king to pay the debt and a fine for unnecessary complaint (Yaj. II 40, Manu VIII. 176, Viṣṇu Dh. S. VI 19). Kāt. (580-584) provides that where<sup>736</sup> it is the custom of the country, the creditor may hold the debtor in restraint openly before an assembly of people until he pays what is due, that when a man so restrained has an inclination to answer calls of nature, he should be followed behind by the creditor or he should be allowed to go alone but fettered, that he should be allowed to go home for his meals and at night if he furnishes a surety, and that the surety will have to remain in restraint (while the debtor is absent), that if the debtor cannot secure a surety or does not accept the proposal of furnishing one he should be confined in jail or should be kept guarded by men; but that a respectable man who is trust-worthy and pure in conduct should not be put in jail, that he should be allowed to go without fetters or after being bound by an oath. Manu VIII. 177, Yaj. II. 43, Nar. IV. 131 lay down that if a debtor is unable to pay a debt then he should be made to do work suitable to his caste in the house of his creditor of the same or higher caste in order to gradually liquidate the debt (but without detriment to his own family) and a brāhmaṇa debtor should be made to pay by easy instalments<sup>737</sup>. Kāt. III. 11 provides<sup>738</sup> that agriculturists and king's servants should not be seized (for debts) at the time when it is the season for them to work, nor a woman for her husband's debt unless she has promised to repay her

736. धार्योक्तदण्डप्रवृत्तिः प्रकाशं जनसंसदि । दातव्यं दण्डादेव च देशाचारस्मिति-  
र्गता ॥ निष्प्रवृत्तान्नायक-स्वादि धार्यमाणस्य देहिमः । पृष्ठतो वातुगन्तव्यो निबद्धो वा समुत्त-  
रेण ॥ स कृतपतिद्वयैव मोक्तव्यः स्वादिने दिने । आहारकाले यामे च निबन्धे यन्निष्ठः रिपुतः ॥  
यो दशमभातिभुवं नाभिमन्त्र्येश चारयेत् । स चारके निरोद्धव्यः स्वार्थो नावेष्ट-  
रक्षिणः ॥ स चारके निरोद्धव्य आर्तः आकम्पितः क्षुब्धः । सन्निबद्धः यमोक्तव्यो निबद्ध-  
प्रपणनं वा ॥ कारण. 380-384 q. by स्मृतिच. II. p. 165, वि. र. pp. 69-70,  
च. न. pp. 257-258. वि. र. p. 67 says that the mode in the first verse is a  
method of अपहार. In modern times a debtor who owes a decretal debt  
can be kept in civil jail under Order 21 rules 37-40 of the Civil Pro-  
cedure Code. In most European countries imprisonment for debts was abolished  
only in the 2nd half of the 19th century. Even now in England under  
certain circumstances a judgment debtor may be imprisoned for 42 days.  
For चारके निरोद्धव्यः vide दशकुमारचरित I p. 36 'सा च दुष्टकन्या ... चारके  
निरोद्धव्येति'.

737. निर्धनमूर्खकं कर्म बृहमनीयं कारयेत् । औचित्येन वाप्राणस्तु दापनीयः जनेः  
जनेः ॥ बृह. q. by वि. र. p. 71, च. न. p. 261.

738. अग्राह्यः कर्महासिषु कर्मका राजपुरुषाश्च । यो वापतिआविणी पतिकुलमुपसन्धत्  
गोपालकार्यमिच्छेत् । अर्थशास्त्र III. 11.

husband's debt, but wives of cowherds and those who take a lease of lands for half produce may be arrested for non-payment by the husband. As compared with the harsh legislation against debtors in most ancient and medieval systems of jurisprudence the rules laid down by the *śūtrīs* are very mild and humane<sup>739</sup>. If there were several creditors there was priority among them i.e. the earlier debt prevailed over the later one; a *brāhmaṇa* creditor however (whatever the date of his advance) was preferred to a *kṣatriya* or other creditor (Yaj. II. 41, Kāt. 514). Kaut.<sup>740</sup> states that the debts owed to the Crown and a *śrōtriya* take precedence over other debts and that unless the debtor is going to abscond several creditors should not simultaneously proceed against one debtor. Section 56 of the Bombay Land Revenue Code makes Government assessment a paramount charge on the land. But acc. to Kāt. (513) if several debts were contracted in writing on the same date, they should all be treated as equal and paid off *pro rata* from the debtor's assets if insufficient; but, if a creditor established that a particular article belonging to a debtor was manufactured by the debtor with his money only, that creditor alone got the money recovered by sale of the article (Kāt. 515). *Bharadvāja* states<sup>741</sup> that if a debtor has no cash then the creditor should be paid by sale of the debtor's other property in order viz. grain, gold, iron, cattle, clothes, land, slaves, and conveyances, (in the absence of fields) his garden and lastly his house and in the absence of even a house time should be granted to debtors of the three higher castes.

739. Under the law of the Twelve Tables in Rome a creditor could put the debtor to death or sell him to a stranger beyond the Tiber or, if there were several creditors, they could divide the body of the debtor among themselves after the third market day (Table III in Ortolan's Roman Law p. 106). Vide Sen's 'Hindu Jurisprudence' pp. 316-17 for later Roman and Irish rules.

740. नान्येषमन्तरं तु नैकं द्वौ उपपद्यन्मित्रदेयानामन्यत्र यतिव्रतानाम् । तत्रापि सुवीता-  
वुत्पूर्णा । राजभोजिपदार्थं वा पूर्वं यतिपादयेत् । कौटिल्य III. 11. नान्येषमन्तरं तु यथापूर्वकृतं  
भवेत् । अन्तर्देयानां देये राजः स्थाप्येतिपादयत् । काल्या. q. by मुनिच. II. p. 167,  
म. वि. p. 235.

741. अथिकं धनमात्रे देययोग्येषु तत्कालम् । धान्ये हिरण्ये तोले वा सोमहिरण्य-  
दिकं तथा ॥ पक्षे सुदोमर्गे च वाहनादि यथाक्रमम् । यतिकरं तु विप्रीय प्रदेयमनु-  
पूर्वम् । केनाभावे तथासमस्तस्याभावे सहकृत्वा । द्विजादीनां सुवामात्रे कालद्वारे विप्रीयते ॥  
भरद्वाज q. by गण. मि. p. 234, परा. मा. III. 259, व्यवहारसार p. 116.  
In view of this passage the remark of Mr. Golap Chandra Sarkar in his  
'Hindu Law' (7th ed. of 1933) p. 432 'Hindu Law nowhere contemplates  
a compulsory sale of immovable property in execution of decrees' seems  
hardly correct.



When a debtor was not able to return the entire debt in a lump, he should write on the back of the document of debt the sums paid by him from time to time or the creditor may pass a receipt (*upagata* or *prasekapatra*, as the Mit. designates it) to the debtor signed by himself (Yaj. II. 93, Nār. IV. 114, Viṣṇu Dh. S. VI. 26). If the creditor, though requested by the debtor, would not pass a receipt he was to lose the balance of his debt (Nār. IV. 114). Nār. IV. 115 and Br. (S. B. E. vol. 33 p. 332 verse 66) further provide that if the creditor does not write down (either on the bond itself or in a separate document) the money recovered by *dharma* or some other method then the debtor himself will be entitled to interest on the amount paid by him.<sup>741a</sup> When the whole debt is paid off, the creditor should tear off the bond of debt or he may execute another document in order to show that the debtor is freed from the debt (if the original is lost or is not within easy reach) and when a debt is borrowed in the presence of witnesses, it should be returned in the presence of the same or other witnesses (Yaj. II. 94, Viṣṇu Dh. S. VI. 24-25). Nār. IV. 116 requires the creditor to return the document when the whole debt is paid off or to announce openly to others that it has been paid.<sup>741</sup>

It has now to be seen who (other the man himself) are liable to pay a man's debt. The liability to pay another's debt may arise on three grounds, (1) religious, (2) equitable and moral, (3) legal, such as agency (express or implied) or authority. That the sons and grandsons of the original debtor are liable to pay on religious grounds the debt of the father is expressly stated by numerous writers such as Kauṭ.<sup>742</sup> III. 11, Yaj. II. 50, Nār. IV. 4, Br. (S. B. E. vol. 33 p. 328 verse 49), Kāt. (560), Vṛddha-Hārta VII. 250-51, Viṣṇu Dh. S. VI. 27.

741a. भर्मादिभोदद्याप धनं प्रत्यपरि न हेतवेत् । न चैवोपगतं दद्यात्तरं तद्वृद्धिना-  
प्युक्तम् ॥ बृह. q. by वि. र. p. 80, च. य. p. 277.

742. लेखे दद्याद्विमुक्त्यर्थं तदभावे प्रविभक्तम् । धनिकार्णिकयोरेवं विमुक्तिः दद्यात्तरं तद्वृद्धि-  
नाप्युक्तम् ॥ नारद IV. 118. असहाय explains 'प्रविभक्तं विमुक्तिपत्रम्', while the स्मृतिक-  
II. p. 162 and च. य. p. 277 read प्रविभक्तम् and explain 'प्रतिदानं कृतमिति  
साक्षिभिः भाष्यम्'.

743. अविवाहोऽपि पुत्रिप्राप्तिभाष्यमर्थक्यपातदेशकालं तु पुत्राः पौत्रा वा बन्धुकाः । अर्थ-  
शास्त्र III. 11: कन्यादण्डपातं प्राप्तं पुत्रैर्दर्शनेनैव पुत्रम् । दण्डः पौत्राणां पौत्रास्तच्छत्रुप्राप्तिव-  
र्त्ते ॥ नारद IV. 4: कन्यामासीदवतिष्ठत् देवं पुत्रैर्गोभानितम् । पौत्राणां सन् देवमदेष्टुं  
तन्मुतस्य तु ॥ बृह. q. by the मिता. on वा. II. 50: पुत्राभावे तु दातव्यमुच्यते पौत्रेण वक्षतः ।  
चतुर्थेन न दातव्यं तस्माद्विनिवर्त्ते ॥ कात्या. 560 q. स्मृतिक. II. p. 171, वरा. मा. III.  
p. 264, वि. र. p. 49, च. य. p. 264.

The important question is whether the *smṛtis* declare the liability of the great-grandson. It is clear that *smṛtis* like that of Br. expressly say that the great-grandson is not liable to pay his great-grandfather's debt. The *Viṣṇu Dh. S. VI. 28* says that the descendants beyond the grandson need not pay if they are unwilling to pay. Others like *Nār. IV. 4* and *Kāt.* say that the obligation to return a debt ceases from the fourth. The question is what is meant by the fourth i. e. is it meant to exclude, in calculating, the original debtor or to include him? It is possible to hold (particularly because the great-grandson is not expressly mentioned in most *smṛtis*) that the fourth means 'inclusive of the original debtor'. But this appears to be in conflict with the rule in *Manu IX. 137* (which is the same as *Baud. Dh. S. II. 9. 6*, *Vas. 17. 5*, *Viṣṇu Dh. S. 15. 46*) that the son, grandson, and great-grandson confer the greatest spiritual benefit on the ancestor, the rule (*Manu IX. 186*, *Nār. IV. 6*) that *pinda*s (in *śrāddha*) are to be offered by three persons in descent and the general rule that whoever takes the inheritance must offer the *pinda* and pay the debts of the ancestor (*Gaut. XII. 37*, *Yāj. II. 51*, *Nār. IV. 23*, *Viṣṇu Dh. S. XV. 40* and *VI. 29*). Therefore, following the canons, viz. the rights to property are co-extensive with the liability to perform *śrāddha* and to pay off debts (which is quite logical and reasonable), that the texts relating to the same subject matter must be harmonized and reconciled as far as it is reasonably possible<sup>744</sup> to do (*ekasāhchārānyāya*), that apparently conflicting texts are to be assigned their appropriate spheres (*viśayavyavasthā*), and that a direct conflict (and so an option) is to be presumed only if no other recourse is open, the *Mitākṣarā* and other commentators put forward the interpretation that the texts stating that the great-grandson is not liable to pay the great-grandfather's debt apply only to cases where the great-grandson inherits no ancestral property, but that he is liable if he takes ancestral property. Dr. Jolly in his note on *Nār. IV. 6* (in *S. B. E.* vol. 33 p. 44) remarks: "the doctrine, viz. the liability to pay debts contracted

744. This principle is stated by the *smṛti* on pa. 1. 4-5 as 'कुलेषु (सम्वा-  
च्येन) परमेष्ठे यमायदेति साक्षाद्वापानासाहवापरिपूरणमन्वयः किमपि विरोधे विकल्पः १'  
नेपातिणि on मनु, XI. 216 puts it in the same way 'एकसाहचर्यान्वयवृत्तीनाममति  
विरोधे सम्यक् योग्ये विरोधे तु विकल्पः'. This view is based on *जैमिनि* II. 1. 46  
अर्थकलादेर्न वाच्यं साक्षात् चेद्विधाने स्पष्ट. The word *एकसाहचर्यता* occurs in *Vedān-  
tantra* III. 4. 24. In *Vāṭṣat v. Prākāśa* 39 Bom. 373 at p. 372 this  
principle has been judicially recognised.



by an ancestor extends to the great-grandson, is opposed to the teaching of such an eminent authority as *Vijñāneshvara*, who maintains in the *Mitākṣarā* that the great-grandson<sup>743</sup> is not liable for debts contracted by his great-grandfather, and conversely that he does not inherit his property'. He makes similar remarks in his Tagore Law Lectures for 1885 (on 'adoption, partition' &c. p. 171). Dr. Jolly is under some misapprehension since the *Mit.* in two places deals with this matter and expressly states that the great-grandson is liable to pay debts contracted by his great-grandfather if he has taken ancestral estate but not otherwise. The following propositions are deducible from the *smṛti* texts and authoritative commentaries like the *Mit.* and the *Vīramitrodaya* (*Vyavahāraprakāśa*). The<sup>744</sup> first proposition is that the debts of a man must be paid by his three descendants (son, grandson and great-grandson) if they have ancestral estate in their hands (*Mit.* on *Yāj.* II. 51 quoted in note 745, *Sm. C.* II. p. 171, *V. P.* p. 264). The 2nd proposition is that even when no ancestral estate was taken by the descendants the son was liable to pay his father's debts with interest, the grandson was liable to pay his grandfather's debt but without interest and the great-grandson was not liable to pay even the principal, if he was unwilling to pay. This proposition is enunciated by *Vīṣṇu Dh. S.* VI. 27-28, *Br.* (S. B. E. vol. 33 p. 328

745. On *अनुपपत्तिरिति* &c. of *दुवर्णमि* referred to above the *मिता* (on *पा.* II. 50) remarks, 'समे पावदपुत्रीं तावदेव देवं न वृद्धिः । तत्कृतस्य प्रपौत्रस्य अदेव-मपुत्रीतधनस्य । एतच्चोपर्युक्तोत्तरं स्पष्टयिष्यते' . On the words *दुवर्णमि* *मिति* *मिता* (on *पा.* II. 51) the *मिता* explains: इत्येतद्वि दुवर्णमिदमस्य प्रपौत्रादयो यदि रिक्तं वृद्धन्ति तदा अग्रे दाप्यतः नान्यथोपदेयमर्थम् । एवमपौत्रो च निवर्णमिदमभावे विना-मित्युक्तम् . Dr. Jolly probably misunderstood 'अपुत्रीतधनस्य' and held it to mean 'that a great-grandson does not take the ancestral estate', but it really means 'if he has not taken &c.' The *उपनिष.* II. p. 171 says, 'एवं च पत्न्यान्महाविकृतमार्गकरणानधिकारो चतुर्णां देवपुत्रीतरिस्थानेन न पुनर्पुत्रीतरिस्थानेन स-मन्वयम्' . ... पुत्रीतरिस्थानं तु पौत्राणामधिकारो वृद्धिर्मातृकणाकारणे । देवे पितामहं समन्वयपुत्रीतरिस्थानेनान्वयम् .

746. The first proposition is followed by modern decisions in British India. Vide *Lachman Das v. Khanna* 19 All. 36 (F. B.) which holds that the mortgagee of a man who had mortgaged joint ancestral property can enforce his mortgage against the grandson of the mortgagor for the realization of interest as well as principal, *Lada Narain v. Gobardhan* 4 Pains 478, *Masit Ullah v. Damodar Prasad* 48 All. 518 (P. C.) where the Privy Council held that the great-grandson is liable for the debts of his great-grandfather as much as he is liable for those of his father or grandfather. In all these cases passages from the *smṛtis* of *Yāj.*, *Nār.* and *Br.* and from the *Mit.* and the *Vīramitrodaya* are quoted and discussed.

v. 49 referred to on p. 443) and Kāt. 556<sup>747</sup>. In *Narasimharat v. Antaji* 2 Bom. H. C. R. 61 it was held (probably following Brhaspati, though not quoted in the judgment) that the grandson was liable to pay the debt of his grandfather without interest even if there was no ancestral estate. This was felt to be a great hardship on heirs (taking no ancestral estate) and in order to remove it Bombay Act VII of 1866 (the Hindu Heirs' Relief Act) was passed whereby it is provided that a son or grandson is not liable to be sued for the debts of his deceased ancestor merely by reason of his being such a son or grandson and that the son, grandson or other heir shall be liable only to the extent of the assets that come to his hands. The same is the law laid down in other parts of India by judicial decisions. Br. (S. B. E. vol. 33 p. 328 verse 48) recommends that the father's debt must be paid first of all and after that one's own debt; but a debt of the grandfather must always be paid even before the preceding<sup>748</sup> two kinds of debt. These two propositions of Hindu jurists are very lucidly, but succinctly, set forth by the Viramirodaya quoted below<sup>749</sup>. The third proposition (which is an exception to the above two) is that even a son is not liable to pay certain illegal and immoral debts of his father. This proposition will be discussed a little further on. A fourth proposition is that even when the father is not dead, the son, grandson or great-grandson may be liable to pay the father's or other ancestor's debt under certain circumstances. Yāj. II. 50 provides that sons (and grandsons) must pay the debt of the father when he is dead or has gone to a distant country or is afflicted with an incurable disease. Nār.<sup>750</sup> IV. 14, Viṣṇu VI. 27, Kāt.

747. पैतामहं तु वस्तुजैने दत्तं योगिभिः रिपुभिः । तस्मादेकैरपि पापैर्द्वैषं पैतामहं समम् ॥  
कारण. 556 q. by स्मृतिच. II. p. 170 and नि. र. p. 48.

748. पित्रमेतावतो देवं पश्चाद्वाप्सीयमेव च । तयोः पैतामहं पूर्वं देयमेवमुक्तं मदा ॥  
बृह. q. by वन. म. p. 183, वि. र. p. 47, परा. मा. III. p. 364.

749. कुत्रेण रिषध्वगृहणाग्रहणयोः सहस्रिकमेव देवम् । दुष्कृतानि पर्येण रिषध्वगृहणे सोद्वेपं देवम् । अग्रहणे मूलमेव । पर्येण तु रिषध्वगृहणे मूलमपि न देवम् ॥ २५. प्र. p. 364.

750. धनदादिभिः वेले धनजिते द्विदशममाः ज्ञासिते वा तत्पुत्रपौत्रेभ्यः देवम् । विष्णु. VI. 27; विद्यमानेपि योगात् स्वदेशान्गोचरिणेपि वा । विज्ञासन्तस्मादेवमुक्तं पितृकुले मृतेः ॥ स्वाधितोन्मत्तपुत्राणां तथा द्विष्यमानिनाम् । ज्ञानमेवंपिथं पुत्राश्च जीवन्तमपि दापयेत् ॥ सोनिध्वेति विदुः दुर्ब्रह्मणं देवं विभावितम् । ज्ञातव्यवृत्तिर्गोन्मत्तपुत्रिदादिरोदिपः ॥ कारण. 348-550 q. by अपराध. p. 630, वि. र. pp. 50-51, परा. मा. III. 364, स्मृतिच. II. p. 169, चर. नि. pp. 255-56. Some of these ascribe the last to बृहस्पति. The first and third verses of Kāt. are quoted in *Pala Ventanna v. Sreenivasu* 41 Mad. 136 at p. 149. The चर. नि. (p. 256) remarks that these texts indicate that during the father's lifetime only the sons are liable for the father's debts and not the grandsons, but if no sons are alive then even grandsons will be liable.



548-550 state that when the father, though living and near, becomes an ascetic (acc. to Visṇu), is afflicted with such diseases or calamities as blindness from birth or loss of caste (due to grave sins), lunacy, tuberculosis, leprosy and other (incurable) diseases or when he has left his country or has gone on a long journey or is very old (above 80) the son will have to pay the debt of the father after the twentieth year (from his going abroad). Acc. to V. R. (p. 50) if the father's disease was incurable or if it was certain that he would not return from his journey then the son was bound to pay at once and was not entitled to wait for 20 years. Kāt. (552-553) introduces<sup>751</sup> a further restriction that even when the father is dead, if the son has not attained years of discretion (i. e. if he is a minor) he need not pay the debt of his father during his minority; but when the proper time to pay arrives he must pay the debt; otherwise the (ancestors) may remain in hell. Thus the son's liability during the father's lifetime or absence was not absolute but limited according to the smṛtis and digests; judicial decisions, however, have brushed all this aside and the son's liability to pay his father's debts during the latter's lifetime is now as absolute as after his death. This will be discussed further on.

According to all smṛti writers even the son, though he may have taken the ancestral estate, is not liable to pay certain debts of the father which are compendiously described as 'illegal or immoral' in the decisions of courts. Gaut.<sup>752</sup> XII.

751. आभ्यासपण्डितेन पितामहेन कश्चित् । काले तु विधिया देवं वसिष्ठमरक्षेयम् ॥  
अभ्यासपण्डितरक्षेयसन्त्रोपि हि वर्णभाक् । स्वातन्त्र्यं हि स्मृतं पण्डिते पण्डितं सृजयामासुतम् ॥  
कात्या. 552-553 q. by स्मृतिक. II. p. 164, स्प. न. p. 263. The 2nd is नारद IV. 31.

752. यन्निर्माणमणिशुक्लमयसूतद्वयाः द्वाकाःपामवेतुः । जी. XII. 38; यन्नि-  
भासं दण्डशुल्कशेषमाशिकं सौरिकं कामदानं च नाकाः द्वयोः दण्डादो वा विग्रहरो दण्डात् ।  
अर्थशास्त्र III. 16; मुराकामयुक्तं दण्डशुल्कमाशिकम् । द्वाकादानं तर्पणे द्वयोः दण्डात्  
पैतृकम् ॥ दर्शनमतिपूर्वम् दूतः कामदिकोपि वा ॥ न तत्पुत्रा कणे दण्डदण्डांताव च रिधतः ॥  
वा. II. 47, 54; न दण्डे निता दण्डादण्डात्पुत्रस्तु पैतृकम् । कामकोपमुराकामयुक्तमिवापहृतं  
निता ॥ नारद IV. 10; दण्डे वा दण्डशेषे वा शुल्कं तच्छेषमेव वा । न दातव्यं तु पुत्रेण पण्डित  
न पण्डितारिकम् ॥ उक्तम् q. by मिता. on वा. II. 47; कात्यायन explains कामकोप-  
कृत debts (mentioned in Nār. IV. 10 and Bg.) as follows: 'पण्डितेनैव वदु  
विद्याकामकृतं दण्डात् ; पण्डितो मनुष्याय कोपाद् दण्डं निवारय वा । उक्तं तुदितरं वदु  
विद्या कोपकृतं हि नृत् ॥ कात्या. q. by अर्थशास्त्र p. 645, स्मृतिक. II. p. 170, परा. मा.  
III. p. 266, वि. र. p. 58, स्प. न. p. 266. द्वाकादानं is explained as पूर्वो बन्धिनि नष्टे  
च कुर्वणे मित्रे सते । चाटकारणचौरसु दत्तं भवति निष्कलम् ॥ q. by मिता. on वा. II. 47,  
स्मृतिक. II. p. 170.

38, Kaut. III. 16, Manu VIII. 159-160, Vas. 16. 31, Yāj. II. 47 und 54, Nār. IV. 10, Br. (S. B. E. vol. 33 p. 329 verse 51), Kāt. (564-565), Uśanas and Vyāsa provide that the son is not bound to pay the following debts of his father viz. those incurred as a surety (for honesty or appearance), for drinking or in gambling, those arising from idle promises (to bards, wrestlers and the like), debts for promises made under the influence of wrath or illicit love to women, the balance of a fine or toll and those that are not *vyāvahārika*. A debt arising from wrath is explained by Kāt. as one where the father causes physical injury to another or destroys another's property through anger and then promises something to pacify the person wronged. As regards the suretyship debts of the father, Yāj. II. 54, Vyāsa and Kāt. (561) provide that when the father was a surety for payment, then the son was bound to pay the principal of the debt for which the father stood surety, but the son of the son was not liable at all to pay the suretyship debt of his grandfather even when the latter was a surety for payment<sup>753</sup>. These verses about the debts which the son was not bound to pay have been quoted and explained in numerous decisions of the courts. But as this work does not profess to be a treatise on modern Hindu Law those cases are passed over here. What is meant by 'debts that are not *vyāvahārika*' has presented the greatest difficulty to the medieval commentaries and digests and also to modern courts as noted below<sup>754</sup>. Kāt. 534 further notes that

753. कर्णं पैतामहं पीवाः नादिनामवाप्तं सुतः । समे दद्यात्समुत्ता तु न दद्यात्पावेति निबधः ॥ व्यास q. by the मिता. on वा. II. 54; अदिनामवाप्तं पौत्रैर्दत्तम् न तु तन्कचित् । पुत्रेणापि समे द्येयमुच्ये सर्वत्र तितुकम् ॥ कात्या. q. by अपराक्ष p. 656. वि. र. p. 44.

754. यच्च न व्यावहारिकं न व्याप्यमान्यर्थः । अपराक्ष p. 658; 'सौरिकम्' स्मृतिच. II. p. 170; न व्यावहारिकं सुराणामादिनिमित्तम् । स्व. य. p. 263; न कुदुम्भोपपत्तिरर्थः । बालम्भडी; अन्वहारवतिष्ठतम् । वि. वि. p. 17. Colebrooke translates न व्यावहारिकं as 'debt for a cause repugnant to good morals'; other renderings are 'which as a decent and respectable man the father ought not to have incurred' (32 Bom. 348 at p. 331), 'not lawful, usual or customary' (39 Cal. p. 862. at pp. 868-869); 'not supportable as valid by legal arguments and on which no right could be established in a court of justice in the creditor's favour' (37 Mad. 458 at p. 460); vide *Bai Mani v. Utasali* 33 Bom. L. R. 130 (at p. 133) and *Hal v. Maneklal* 36 Bom. 36 where the various meanings of 'avyāvahārika' and the conflict of judicial decisions are set out (at pp. 30-33). In the latter case the wide meaning of the words given in 32 Bom. 348 has been disapproved of (at p. 33). In *Gorindprasad v. Raghunathprasad* I. L. R. (1939) Bom. 533 a Full Bench has dealt with the meaning of 'avyāvahārika'. In *Hamraj v. Khunchand* I. L. R. (1943) All. 727 the Privy Council state the various renderings of *avyāvahārika* given by different authors and judges and hold that Colebrooke's rendering makes the nearest approach to the real meaning of the word as used in the *śruti* and that it is the character of the debt that is to be looked to and not the action of the father.



where the father became a surety for appearance (or honesty) after receiving a pledge from the person whose surety he became, then the son of the surety may be made to pay the money due from that pledge in case the father is dead or has gone abroad<sup>755</sup>.

The case law on the subject of the father's debts and the son's liability to pay them has assumed enormous proportions. This is not the place to discuss the case-law. But as the courts in India profess to follow the Hindu Law of the sages and medieval digests, it is necessary to examine some of the principles laid down by the latest decision of the Privy Council. In *Brij Narain v. Mangla Prasad* 51 L. A. 129 (=45 All. 95) the following five propositions are laid down by the Privy Council (at p. 139): (1) the managing member of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity; (2) if he is the father and the other members are the sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt; (3) if he purports to burden the estate by mortgage then, unless that mortgage is to discharge an antecedent debt, it would not bind the estate; (4) antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached; (5) there is no rule that this result is affected by the question whether the father, who contracted the debt or burdened the estate, is alive or dead. It

755. दधीचि वचनके यत्र दूर्शनस्य सिद्धो भवेत् । तिस्र विद्वा यन् लग्नाद् द्वाप्यः  
रपात्तदणं सुतः ॥ कारवा. 534, q. by the Mit. on Yāj. II, 54. अपराधे p. 636.  
Vide Chondhuri Govind Chandra v. Hazagribā 10 Patna 94, where it was  
held that when a father stood surety for the honesty or good behaviour of  
another as guardian for a minor's property, the son was not bound to pay  
the suretyship debt of the father. In Kottapalli v. Kaniapatti 58 Mad.  
375, where the father executed a surety bond that a certain judgment debtor  
would file an insolvency petition within a specified period and the debtor  
failed to do so, it was held that the guarantee was one for confidence or  
honesty and that the sons were not liable on the father's death. Similarly in  
Dhir Narain v. Shiva Sahay A. I. R. 1935 Patna 127 it was held that sons  
are not liable under Hindu Law where the father stood surety for appearance  
only. In Narayan v. Venkatacharya 6 Bom. L. R. 434 it was held that  
under the law of the Mitākṣarā a grandson is not liable to pay a debt which  
his grandfather contracted as a surety unless the latter in accepting the  
liability of a surety received some consideration for it.

is necessary to see how far these principles agree with or deviate from the law of the *smṛtis* and the digests. The first proposition is in consonance with the law of the *smṛtis* and of the commentaries like the *Mit.* *Yaj.* II. 45 provides<sup>756</sup> that whatever debt is contracted by the head of the joint family for the necessities of the family has to be paid by the members who take the ancestral estate when the head is dead or goes to a foreign country. The *Mit.* on *Yaj.* II. 114 quotes and explains a *smṛti* text "Even one (the head or manager of a joint family) can make a mortgage, sale or gift of immovable property in a time of distress, for the necessities of the family and particularly for religious and charitable purposes". What is meant by 'debts in times of distress' and 'kutumbārthe' is explained by *Kāt.* (542-43) quoted in n. 756. This has been the foundation of numerous cases, the first and the most important of which is that of *Hunoomanpersaud v. Mussumat Baboo*<sup>757</sup> 6 Moore's Indian Appeals p. 393 (P. C.). The 2nd proposition laid down

756. अविमर्शः कुटुम्बार्थं यदपि तु कृतं भवेत् । दयानुसद्दिग्भिः तेनैव बोधिते वा कुटुम्बिभिः ॥ वा. II. 45: कुटुम्बार्थमन्येनैव स्वीयं प्राप्तिन वा । उपह्वयनिमित्तं च विद्यादायकत्वे तु नत् ॥ कर्मवैशेषिकेन चैव देतवार्थं च वक्तव्यम् । एतत्तु यदात्मन कुटुम्बेन कृतं मनोः ॥ कात्या. q. by अपराधं p. 647, परा. मा. III. p. 248. *Nār.* IV. 3, *Manu* VIII. 166, *Viṣṇu Dh. S.* VI. 39 contain similar provisions, all of them employing the word कुटुम्बार्थं (for the purposes or benefit of the family).

757. At pp. 421 and 424 of 6 Moore's Indian Appeals the Privy Council employ the following words that have become classical: 'The power of the manager for an infant heir to charge an estate not his own is under the Hindu Law a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance, is the thing to be regarded....They think that if the lender does inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge and they do not think that under such circumstances, he is bound to see to the application of the money'. The words 'the actual pressure, the benefit to be conferred' and the remarks about inquiry by the lender are a prolific source of litigation and have given rise to a mass of case-law. In *L. R.* 51 I. A. 129 at p. 137 the Privy Council themselves say that the distinction made between secured and unsecured debts of the father is anomalous. They give an instance. 'A father who is manager borrows a like sum from A and B. To A he gives a mortgage on the family estate containing a personal covenant. To B he gives a simple acknowledgment of loan. B sues and gets a decree; on this decree execution can follow and the estate can be taken. A, suing on his mortgage, cannot recover' (because the debt was not antecedent!).



above also follows from several *smṛtis* (such as *Yāj.* II. 50, *Viṣṇu Dh. S.* VI. 35, *Nār.* IV. 2, 4, 6) and the rules about immoral debts cited above. But it is difficult to understand why the Privy Council make a distinction between a simple personal money debt of the father and a debt secured by a mortgage (as in propositions 2 and 3). The ancient texts and commentaries make no such distinction. Vide 42 *Mad.* 711 at p. 731, 26 *Bom.* 206 at pp. 217-219 (F. B.) and 60 *Bom.* 311 (F. B.) where this is pointed out. With the greatest respect it must be said that the distinction is not only without *dharmaśāstra* authority, but is also anomalous. The distinction between 'antecedent debt' and a debt contracted at the time of executing a mortgage is unknown to the *smṛtis* or digests. The Privy Council had used for the first time in a very early case (viz. *Suraj Bansi v. Sheo Proshad* 6 I. A. 88 at p. 106 = 5 *Cal.* 148, 171) the words 'antecedent debt'<sup>758</sup> for which there is nothing corresponding in the Sanskrit authorities and round which elaborate arguments came to be centred in numerous later cases. According to the Privy Council (proposition 5) the son's pious duty to pay his father's debt is as absolute during the father's lifetime as after his death. It has been shown above that the duty was not absolute but qualified and limited during the father's life according to the *smṛtis*.

*Yāj.* II. 52, *Kaṇṭ.* (III. 11) provide<sup>759</sup> that husband and wife, father and son and brothers cannot, as long as they are undivided, stand sureties for each other or be debtors and creditors of each other or be witnesses for each other. The *Mit.* has a long note on *Yāj.* II. 52. It shows that a wife may be divided as to estate from the husband if the latter desires (as laid down in *Yāj.* II. 114) and that in that case there may be the relation of debtor and creditor between them.

758. The proposition laid down in 6 I. A. at p. 106 is 'where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money for an antecedent debt or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted'.

759. *ब्राह्मणमथ दम्पत्योः पितुः पुत्रस्य चैव हि । यन्निर्माणमुक्तं मायननिमित्ते न तु स्मृतम् । या. II. 52; दम्पत्योः पितृपुत्रयोः ब्राह्मणं चाग्निनिकामं परस्परकृतमुज्जगत्साधकम् । कौटिल्य III. 11.*

The Mit. further explains the sūtras of Āpastamba<sup>760</sup> (Āp. Dh. S. II. 6. 14. 16-19) which lay down 'there can be no division between husband and wife, for since the day of marriage they have to perform religious rites together, they also participate together in the rewards of merit arising from religious rites and also in the wealth acquired; for this reason when the husband has gone abroad if the wife spends on necessary occasions (out of the family wealth) it is not declared to be theft'. The Mit. explains that the absence of division between husband and wife is restricted to religious rites performed with *śrauta* fires or *smūrta* fire and in the rewards of meritorious acts and not in all actions or as to all property. Therefore in other charities where no sacred fire is required (*pūrā* acts such as constructing a well or a public park) they have separate rights. Vide S. V. pp. 353 for various explanations of Bhāruchi and others on Āp. Dh. S. and V. P. pp. 255-56.

The father is not bound to pay his son's personal debt; the husband is not liable to pay the wife's debt, nor the wife her husband's or son's. But in all these cases if the debt is incurred for the benefit or purposes of the family by the son, the wife or the husband then the father, husband or wife respectively would be liable (Yāj. II. 47, Nār. IV. 10-11, Kāt. 545, 579)<sup>761</sup>. If the father promised to pay his son's individual debt or if he approved or acquiesced in it he was liable to pay it. Manu VIII. 167, Yāj. II. 45, Nār. IV. 12, Br. (S. B. E. 33 p. 329 v. 50), Kāt. (545) provide that a debt incurred for the purposes of the family by any one such as the son, brother, uncle, the wife, the mother, the pupil or a servant or a slave even without the consent of the head of the family when he has gone abroad, should be paid by the head of the family. This liability and the liability when the manager of a family contracts a debt for the benefit or necessities of the family arise from agency (*implicit*) or authority. Kaut. (III. 11) holds that the husband may be seized (for work)

760. आपास्तम्बेन विधानं विद्यते । पण्डितैर्नादि महलं कर्मसु । तथा दूयपलेषु दम्पतिप्रदेशेषु च । न हि मूर्खविवासे नैमित्तिके दाने सौपत्यपदिशन्ति । आप. ध. सू. II. 6. 14. 16-19.

761. पण्डितैरुपामतेनापि कुटुम्बार्थं कृतम् । दाम्नीमातुश्चित्तैर्वा दद्यात्पुत्रेण वा पुत्रः ॥ कात्या (545) q. by अपराकं p. 648, वरा. मा. p. 268, वि. र. 36. अपराकं reads दामस्तुवमापशितैर्वा, अमातु would mean agnates residing in the house. This verse is quoted in Virasvami v. Apparvami 1 Mad. H. C. R. p. 375, 379a. चित्तुम्बारादुद्वेग्यदामशित्तुम्बारादुद्वेग्यः । यद् दत्तं कुटुम्बार्थं नद् दत्तं दामस्तुवति ॥ वरा. q. by मृत्तिका II. p. 174.



if he starts to go abroad without providing for the return of the debt contracted by his wife.<sup>762</sup>

The general rule that the husband was not liable to pay the wife's debt had an exception viz. the husband was liable for the debts of the wife in the case of cowherds, vintners, actors, washermen and hunters (and the like) whose income depends on their wives and whose household expenses are defrayed by their wives (Yāj. II. 48, Viṣṇu Dh. S. VI. 37, Nār. IV. 19). Similarly the rule that the wife was not liable for the husband's debt had certain exceptions, viz. a debt of the husband which she promised to pay because he was dying or going abroad or which was contracted jointly with her husband<sup>763</sup> (Yāj. II. 49, Nār. IV. 16-17). The Mit. on Yāj. II. 49 answers the objection raised by some that, as according to Manu VIII. 416 (= Udyogaparva 33. 64) the wife, son and slave are without property and whatever they earn is acquired for him to whom they belong, the wife would not be able to pay anything at all. The reply is that this verse of Manu does not mean that a wife or son can own no property at all, but all that it declares is that they have no independent power to dispose of their property.

The order in which persons are liable to pay a man's debts after his death is declared by Yāj. II. 51, Nār. IV. 23, Br. (S.B.E. vol. 33 p. 329 verse 52), Kāi. (562, 577), Viṣṇu<sup>764</sup> VI. 39-30.

762. पतिवत्तु यावत् स्त्रीकृतमुपमणविभाषां भोषित इति । अर्थशास्त्र III. 11.

763. न स्त्री पतिकृतं दद्याद्गते पुत्रकृते तथा । अग्न्युपेतादन्ते पद्म सह यत्ना कृतं भवेत् ॥ नारद IV. 16; मन्वीं पुत्रेण वा सार्धं केन्देनात्मना कृतम् । कर्णमेवंविधं देवं नारदया तत्कृतं शिवा ॥ मर्तुकामेन वा मर्तो योक्ता देवदुर्गं तथा । अतश्चापि सा तत्त्वा धनं यदाभितं शिवाम् ॥ कात्या, 545, 547 q. by स्मृतिच. II. p. 176, स्व. प्र. pp. 273-274. In I. L. R. 1 Bom 121 at p. 124 Kāi. 546 is cited. In Narotam v. Nanka 6 Bom. 473 it was held that a married woman who contracted a debt jointly with her husband was liable to the extent of her *stridhana* only and not personally.

764. धनस्त्रीहारीपुत्राणां मुणभरणो धनं तरेत् । पुत्रोऽस्ततोऽस्त्रीधनेनोऽस्त्रीहारी पति-  
पुत्रयोः ॥ नारद IV. 23; पूर्वं दद्याद्धनमातः पुत्रेतरमाद्धनतरम् । पोषिपुत्राहः सुताभारं  
पुत्रो वापन्ननिर्धत्तः ॥ कात्या (577) q. by स्मृतिच. II. p. 172, स्व. प्र. p. 271; रिक्थ-  
हारी कर्णं देवं तदुभावे च पोषितः । पुत्रेण तदुभावेन्दे रिक्थभागिभर्याकम् ॥ कात्या.  
(562) q. by विनयक on चा. II. 47; विनयक quotes a prose passage of बृहस्पति  
' धनस्त्रीहारीपुत्राणां पूर्वाभावे पशोस्तस्मादभरणं तदुभावे क्रमशोऽन्येर्वा रिक्थभाजात् ' ; while  
later works like the स्मृतिच. II. p. 172 and स्व. प्र. p. 267 quote a verse of बृह-  
' स्त्रीहारी च तथैव स्पादुभावं धनहारिणः ' . The वैजयन्ती on विष्णु. IV. 30 explains  
Yāj. II. 51 as अथ पुत्रो विशेषः तद्वैजयन्ती जीवपि विशेषणानि । तत्रात्मिकपुत्रसम्भावे  
रिक्थमाहः पुत्रः । तदुभावे कृतद्वाराकृतद्वाराणां समभावे पोषिपुत्राहः ... । तदुभावे अतश्चा-  
भितद्वयः । न विद्यन्ते अन्ये पुत्रद्वारादयो यस्य न धनम् : पुत्रद्वारादिरहितः । न भित्तं द्रव्यं  
वेनासौ अभितद्वयः ... निर्धत्ते वा । अतश्चाभितः अभितद्वयः सपथस्यद्वयोरी समानः ।  
नादसः पुत्रः कर्णे दाप्यः ।

Whoever takes the wealth of the deceased (whether a son or a collateral heir) is primarily responsible to pay the debts of the deceased; but if the deceased died without leaving any property, then he who takes his wife has to pay the deceased's debts; if there be no wealth or taker of the deceased's widow, then the son even if he succeeds to no wealth has to pay. This liability may be said to be based on the equitable and moral principle that whoever takes the wealth of the deceased or his widow (over whom the deceased had a sort of dominion) was bound to pay his debts. There appears to be some conflict between the texts; but it is more apparent than real. Verses (like *Kāt.* 577) where the son is placed after the taker of wealth and before the taker of the widow refer to a son who has separate and independent wealth of his own and is more wealthy than the taker of the widow (though he himself being disqualified did not succeed to, ancestral wealth). When there is no wealth and there are several sons one of whom is congenitally blind or otherwise incompetent to succeed then the other sons are liable. From the fact that the taker of the widow is made liable for the debts of the first husband it should not be supposed that the ancient sages approved of widow-remarriage. On the contrary they condemned it (vide *Manu* V. 162), but, as the *Mit.* (on *Yāj.* II. 51) remarks, remarriages took place by custom among certain castes and nothing could prevent persons from taking widows as kept mistresses. Therefore as the wife was half of the husband (acc. to *Vedā* and other passages q. in *H. of Dh.* vol. II. pp. 428, 584 n.) she was practically the husband's wealth (*Nār.* IV. 22 expressly says so)<sup>765</sup> and so the taker of the widow was saddled with the obligation to pay the debts of the deceased. This sentiment continued to modern times and in the Bombay Presidency the Legislature had to declare (by *Bombay Act* VII of 1866, sec. 4) that 'no person who has married a widow shall merely by reason of such marriage, be liable for any of the debts of any prior husband of such widow'. The *Valjayanṭi* on *Viṣṇu Dh.* S. VI. 30 quotes *Yāj.* II. 51 and *Nār.* IV. 23 and

765. अपनस्य कपुत्रस्य दूतरोपैति कः शिवम् । न आनजेषुषं सोऽहः सैव तस्य धनं पतः ॥ *नारद* IV. 22 : पोषिद्वाहो यद्यपि शास्त्रविरोधेन न संभवति तथाप्यनिकाङ्क्षनिवेद्यः पूर्वपतिहृत्यर्थापन्नरणाधिकारी भवत्येव । पोषिद्वाहो यद्यनृणां स्त्रीरिणीनामनित्यो वृद्धानि यच्च पुनर्युवो लिङ्गानां नयनाम् । *मिता*, on *यज.* II. 51. Then *नारद* (ब्रह्मसूत्रयोग) verses 45-53 are quoted by the *Mit.*



explains them differently. According to it the word 'putra' (in Yāj. II. 51) is qualified by all the three adjectives viz. 'rikthagrāha', 'yosidgrāha' (one who is married) and 'ananyā-śritadravya' (one who has no wife nor child and one who has taken no ancestral wealth, either because he does not desire it or because none exists). Therefore according to it among sons, the son that takes ancestral wealth has to pay the debts of the father, on failure of such a son when some of the sons are married and some are not, the married ones have to repay ancestral debts and lastly when there are no married sons the one that is wifeless, childless and also without wealth has to pay them.

*Nikṣepa* (deposit). The words *nikṣepa*, *upanidhi* and *nyāsa* are sometimes said to be synonyms (as done by Amara)<sup>766</sup>, though several ancient works define them separately. According to Yāj. II. 65 *upanidhi* is the deposit of an article enclosed in a box or the like made with another without telling him of the contents of the box. Yāj. II. 67 holds *nyāsa* and *nikṣepa* to be different from *upanidhi*. Nārada<sup>767</sup> as quoted in the Mīt. on Yāj. II. 65 defines *upanidhi* as the deposit of an article in a sealed receptacle without counting it in the presence of the person to whom it is entrusted and without telling him what the receptacle contains, while a *nikṣepa* is a deposit entrusted to a man after counting the articles in his presence. Manu VIII. 149 (= Vas. 16, 18), Kaut. III. 12 hold *nikṣepa* and *upanidhi* to be distinct. A verse quoted by Keśirasvāmin on Amara defines *nyāsa* as an open deposit and *nikṣepa* as the delivery of some goods to an artist or craftsman for being worked up or manufactured. Nār. (V. 1 and 5) defines *nikṣepa* as the deposit of one's articles with another through confidence, while *upanidhi* is defined in the same way as Yāj. II. 65. Viśvarūpa<sup>768</sup> defines *nyāsa* as an open deposit for safe custody and *nikṣepa* as delivery of one's article to another for handing over to a

766. इमास्तुपनिधिर्भासः पतिदानं तदुपेयम् । अमरकोशः । स्मार्ते लेखां भेदेति । वास-  
मयः ... स्वस्य वदपितम् । इत्यमुपनिधिर्भासः पकारस्य रथापितं तु यत् । निक्षेपः सिद्धिपक्षे तु  
भाणं संस्तुतिर्पितम् । श्रीरस्यामी ०० अमरकोशः ।

767. यथाह नादयः । असंख्यातमापेक्षानं समुद्धं पक्षिर्वापते । तज्जानोपादुपनिधि  
निक्षेपं गणितं विदुः । मिता. ०० वा II. 65.

768. ग्यासी निर्दिष्टस्वकं द्रव्यं यद्वक्तव्यं समपितम् । निक्षेपोपपक्षस्तु यत् यद्व्यपदि  
द्वयत्नेन निक्षेपम् । विश्वकोष ०० वा. II. 69.

third. Kat. (592) makes <sup>769</sup> *upanidhi* a generic term for all bailments such as a sold article remaining in the hands of the vendor, a deposit, a pledge, bailment to one for delivery to another, loan of article for temporary use, goods handed over for sale to an agent. The Mit. on Yāj. II. 67 defines *nyāsa* as handing over to some member in the house an article in the absence of the head of the house for delivery to the head of the house and *nikṣepa* as a deposit in the presence of the depositor himself. The V. P. p. 280 briefly distinguishes the three as noted below.<sup>770</sup>

*Nikṣepa* or *upanidhi* was a bailment made in trust and differed from an *ūdhā* in this that the former was not given by way of security for a debt or for collecting interest but in confidence for safe custody.<sup>771</sup> Br. (SBE vol. 33 p. 332 verse 2) says that such a deposit is made with another when one is leaving one's home, or through fear of the king or for depriving one's kinsmen.<sup>772</sup> Mām. VIII. 179 (=Nar. V. 2) says that one should entrust a deposit to a person who is born of a good family, is well-conducted, knows *dharma*, speaks the truth, has a large family, is wealthy and straightforward. The person with whom a deposit is made generally receives no personal benefit from it; hence the *śūrtis* (such as Br. in SBE 33 p. 333 verses 6-8) extol the holder<sup>773</sup> of a deposit made in trust to be as meritorious as one who makes gifts of gold or other inferior

769. कस्यः योचितनिश्चितं वन्ध्यान्वाहितवाचितम् । वैपश्यन्परिते चैव सोर्धन्यपनिधिः  
स्मृतः ॥ कात्या. 592 q. by स्मृतिच. II. p. 3, अथराज्ञे p. 662, विवादचन्द्र (p. 27,  
reads कस्यः योचितनिश्चिते) .

770. ब्राह्मणस्य समक्षे भण्यन्ति सा स्थापितं निक्षेपः । सुदृष्टान्मित्रोऽसमक्षे यजित्कर्मणि  
वा तस्मिन्नागते दत्तदातृश्रमिन्नुक्तान्तरं तत्पुत्रादेहेते द्वयं न्यासः । सुदृष्टिस्तु समक्षमग्निना  
स्थापितमुपनिधिर्निति । न्य. २. p. 280.

771. पूर्वपुत्रचक्षणेऽथवा पश्चमे पुत्रपुत्रे तद्वनपेशका रक्षणाभिमतान्तरं दत्तमुपनिधि-  
रिति कणादानान्तरमुपनिधेरन्तरः । स. वि. p. 265.

772. स्थानागमनादायनवायुं दापादानां च वज्रनात् । स्वद्वन्द्वमर्पणेनैवैव हस्ते निक्षे-  
पमाह तम् ॥ बृह. q. by स्मृतिच. II. p. 178; राजचौरादितिभवाद्दापादानां च वज्रनात् ।  
स्थानार्पणेऽप्यपुदे द्वयं न्यासः स परिकीर्तितः ॥ बृह. as q. by न्य. २. p. 379.

773. दत्तस्य दत्तवेत्तुश्च हेमकुण्डाम्बरादिकम् । तत्प्राप्तपालको न्यासं तथैव श्रवण-  
गतम् । भर्तृदेवे यथा नावाः हुंसः पुत्रमुद्बुधे । दौर्ध्या भवेत्तथा न्यासे भक्षितं पिशितं दृष्टाय ॥  
न्यासस्यैव न दृष्टीयात्तस्मात्तत्प्राप्तकर्मकरः । सुहृदि गालपेशनात्मकुप्याचितमपेदे ॥ बृह.  
q. by स्मृतिच. II. p. 178, बरा. m. III. p. 281, न्य. २. p. 381, अथराज्ञे p. 662  
(first two only).



metals or clothes and condemn the misappropriation of a deposit or the losing of it through negligence as very sinful. The idea is that no one is bound to accept a deposit, but when a person accepts it, his primary duty is to preserve it with care and the next duty is to return it at the time agreed or on demand. The obligation arises from the trust reposed in a person. The rights of the bailee are limited as compared to those of the mortgagee or pledgee, but the very fact of his custody in trust clothes him with certain rights. The amount of care required of the depositee is the same as in the case of an *ādhi*, viz. he is to take the same care of it as he takes of his own goods and is not liable if the deposit is lost (along with his own property) through act of God or the king or is stolen by thieves (Manu VIII. 189, Yaj. II. 66, Nār. V. 9 and 12, Br. in S.B.E. 33 p. 333, verse 10, Kat. 593).<sup>774</sup> In the Mrochakatika Candatta accepts liability for the loss of the ornaments deposited with him by Vasantasena, though they were stolen, because of his high sense of chivalry and of his idea that proper care was not taken by him or his friend. But Nār. V. 9 is careful to add that the loss through *vis major* or through theft must be real and not fraudulently brought about.<sup>775</sup> Nār. V. 6 and Br. (in SBE 33 p. 334 verse 14) state that a deposit may be made in the presence of witnesses or without them, that it should be returned in the same way and condition in which it was made and that if there is a dispute, it may be settled by ordeal (when there are no witnesses).<sup>776</sup> The article deposited must be returned in the same condition (as regards seal &c.) in which it was handed over (Yaj. II. 65). It must also be returned to the man himself who made the deposit and not to his co-owners (Manu VIII 185, Br. in SBE 33 p. 333 verse 9).<sup>777</sup> He is estopped

774. देवराजोपपातेन यदि लब्धशमाप्नुयात् । कदीदृक्पक्षवर्ति तत्र दोषो न विद्यते ।  
बृह- q. by स्मृतिसं. II. p. 179; निमित्तं वरप पक्षिभिन् समपातेन पाठ्यते । देवराज-  
कुतादयो विनाशस्तस्य कीर्यते । कात्या. q. by स्मृतिसं. II. p. 179, ख. q. p. 252.

775. ग्रहीतुः सह योग्येन ग्रहो नष्टः स दण्डितः । दीनराजकृते तद्वच्च भेषजिह्वाकारितम् ।  
नारद V. 9.

776. यो दत्ते निधौ तत्र विसर्वादः सजायते । विभाषके तत्र विष्णुमुपधोरति च स्तुतम् ।  
बृह- q. by अथर्ववे. p. 664, ख. q. p. 284.

777. रथापि तेन निधिन्य येन वज्र पथाविधि । तपेन तस्य तद्वेदं न वेदं प्रादन्तरे ।  
बृह- q. by स्मृतिसं. II. p. 181, परा. मा. III. p. 281. 'रथापि कतरस्य वरप रथापि दृष्टे  
स्वान्तमस्ति स इह प्रादन्तर इत्युच्यते ।' स्मृतिसं. II. p. 181. ख. p. 256 remarks on  
स्तु VIII. 186 'अप्यन्तरवद्वेदे तु ... केकस्मिन् प्रादन्तरे देयम् । पि तु सवनादन्तर-  
सक्तिप्राप्तिं न निशेधुवन्तुभिरभिधीक्य इत्यनेन सूत्रपाठ्यम् ।

from recognising the title of any one except the depositor, as in section 116 of the Indian Evidence Act. But if the bailor be dead the bailee can return it of his own accord without demand to the co-owners (Manu VIII. 186 = Nār. V. 10). In doing so however he must not return it to one of several heirs, but to all or in the presence of all. The loss of a deposit may be due to the fact that the bailee consumes it by using it, or to the bailee's negligence or to his ignorance. In these cases the bailee was made to reimburse the bailor for the loss. But Kāt. (597)<sup>778</sup> makes a difference, viz. when a bailee consumes the deposit by use he should be made to pay the price with interest, when he loses it through negligence he is to pay only the price (but without interest) and if he loses through ignorance, then he is to pay a little less (i. e. less by one-fourth) than the price. Vide Bṛ. (S B E vol. 33 p. 333 verses 11) and Nār. V. 8. If a bailor knowing the proposed bailee to be a careless man deposits his goods with him, the bailee is not liable even if the goods are lost from any cause whatever (Kāt. 599).<sup>779</sup> If immediately on demand by the depositor the bailee does not return the thing deposited or it is lost after demand from any cause whatever (including act of God or king), the bailee has to return the thing or the price of the thing (when lost) and also is liable to be fined by the king in the same amount (Yāj. II. 65, Nār. V. 7). If the bailee makes use of the article bailed without the permission of the bailor, he should be fined by the king and should be made to return the thing bailed with interest (Yāj. II. 67, Nār. V. 8). In the Rāj. T. (VIII. 124-157) occurs the story of a person who had deposited one *lakṣ* of *dirūras* with a merchant and had withdrawn some money from time to time. It further states that, when the balance was demanded, the merchant furnished a statement of accounts giving a list of

778. व्यासादिकं परद्रव्यं प्रक्षिप्तमुपेक्षितम् । अज्ञानमगतिं चैव देव द्वापयः स एव कृतः ॥ भक्षितं मोक्षं द्वापयः समं द्वापय उपेक्षितम् । किञ्चिन्मूलं चद्रव्यः स्वाहृद्व्यमज्ञानं नाक्षितम् ॥ कात्या. 596-597, quoted by परा. मा. III. p. 283 (ascribes 597 to व्यास), पर. म. p. 282 (ascribes 597 to both कात्यायन and व्यास), मित्ता. on वा II. 67 (597 only). बृह. प. by परा. मा. III. p. 283 and पर. म. p. 282 has a similar verse भेदुर्नोपेक्षया व्यासं कर्त्तव्यं यदि नाज्ञयेत् । वाच्यमानो न द्वापयः द्वापये तस्योद्वेगं भवेत् ॥ 'किञ्चिन्मूलमिति चतुर्भाष्यीनिम्' मित्ता. Compare Sec. 161 of the Indian Contract Act.

779. ज्ञात्वा द्रव्यविषयं तु द्वापय एव निमित्तिभवेत् । सर्वोपायविनाशोपि कर्त्तव्यं नैव द्वापये ॥ कात्या. q. by स्मृतिच. II. p. 179, परा. मा. III. p. 283, वि. र. 39, पर. म. p. 282.



fictitious items of withdrawals for many years with interest and showing that very little of the deposit was left. The king brought home the fraud to the merchant and ordered that the original deposit being used by the merchant should bear interest.

Kāt. (506) provides that when a deposit, a balance of interest, purchase price (not paid though the article be delivered to vendee), or sale price (article sold being retained by vendor though price is paid) is not returned or paid when demand is made, it carries interest at 5 per cent (from the date of demand).<sup>780</sup> Manu VIII. 191 (which is almost the same as Nār. V. 13) provides that where a bailee does not return the deposit though demanded or where a person without making a deposit claims it from a person, both are to be punished as a thief by the king and to be made to pay a fine equal in amount to the price of the bailed article (claimed). The deposit has to be taken back at the proper time by the depositor and the bailee has to avoid returning it at an improper time; if the latter returns at an improper time he should be made to pay a fine double of the value of the thing<sup>781</sup> (Kāt. 601).

Yāj. II. 67, Nār. V. 14, Br.<sup>782</sup> (S. B. E. vol. 33 p. 334 verse 15) extend these rules about *nikṣēpa* to other kinds of bailments viz. to *yācitaka* (an article such as an ornament borrowed from a man on a festive occasion), *amāhita* (what is handed over to a third man and is the property of another and has been pledged with a man), *nyāsa*, *upanidhi*, *tūlpaṅgūsa* (giving an article such as gold to an artisan like a goldsmith for preparing an ear-ring or the like), *pratyūsa* (mutual deposit). Some of the rules about *yācitaka* are stated above

780. निक्षेपं बुद्धिमेव च कर्षं विक्रयेव च । वाच्यमानेन न दद्याच्छेदजे पञ्चकं शतम् ॥ कात्या. q. by मिता. on वा. II. 67, परा. ना. III. p. 224, वि. र. 15. 'यो मूलं प्रहस्ता विहायमपि वसादि वाचितं न ददाति केना वा कृतिना कर्षसाधनमूलं वाचितं न ददाति स पञ्चकशतकमेव बुद्धिं दद्यादित्यर्थः' वि. र. p. 15.

781. बाह्यस्तूपमिषिः काले कालहीनं तु कर्षयेत् । कालहीनं दृष्टं दृष्टं द्विगुणं च यदाप्यते ॥ कात्या. 601 q. by अथर्षकं p. 663, स्मृतिच. II, p. 181, परा. ना. III. p. 286, अ. य. p. 285 which remarks (following Sm. C.), दृष्टमवाहुपनिधिरूपस्य हस्तं स्पष्टतस्तद्गतं काले स बाह्य इत्यर्थः । तद्गवासीति काले स्वयमेव नावाचितमर्पणीयम् । सङ्कटावचितमप्येदं द्विगुणं कर्षयेत् । तद्वये परंमम स्वयमेवावाचितं दीयमानं कालहीनं तस्य दानं दौष्ट्यमेवेति तद्वदपि दृष्टो दुक्तः । Compare sec. 159-160 of the Indian Contract Act.

782. अन्वाहिते वाचितके शिल्पिणास्तैः सक्कणैः । एष एवेदितो पर्यस्तथा च ज्ञरणा-यते ॥ बृह. q. by स्मृतिच. II. p. 182, अ. य. 287.

(pp. 426-427). Kaut.<sup>783</sup> III. 12 states that a *yācitaka* or *avakrihi* (lent on hire) article should be returned in the same condition in which it was received. If lost through act of God or king or through theft (after taking proper care) the depositee would not be liable. Kat. (610) provides<sup>784</sup> that he who having taken the loan of an article for use does not deliver it even on demand should be restrained (by the owner) and forcibly made to return it and fined by the king if he does not return it; he should be made to pay the price with interest (if the thing be lost after demand). If the loan of an article was taken for a specified period or for a particular occasion or purpose and a demand for return be made in the middle and the article is not returned when demanded, the person taking the loan would not be made to pay the price: but if a person who has taken on loan an article does not return it after the period fixed has expired or the purpose is served, the borrower must offer to the owner the price if the article be destroyed or lost and if he does not return even after demand (when the period has ended) the borrower would have to pay the price with interest.

Kat. (609) states a reasonable counter-exception to the rule in 606 viz. 'when the owner of an article borrowed by another is likely to sustain loss if the article borrowed were not returned on demand, then the borrower should be made to deliver it even though the time fixed has not ended or the purpose of the loan was only half fulfilled'.

There are some special rules about *śilpingāna* also. Kat. (603-604) provides that if an artisan or craftsman retains an article delivered to him beyond the time that was settled (or

783. पाचितकम्प्रीतिहे वा वचाविधं दूर्द्धादुस्तथाविधोक्तपरेषु: । केचोपनिषाताभ्यां देशकालोपप्रेषि दुर्धे नर्धे विनर्धे वा नाग्याभवेदु: । केषमुपनिषिन्ना व्यासवातम् । अर्थशास्त्र III. 12. On अवहित there is difference between the digesta. The *mita*. defines 'वर्द्धकायं हस्ते निक्षिप्तं वृष्यं तेनाप्यनु पश्चाद्वन्द्वहस्ते स्वामिने देहीति निहितं तद्वन्वाहितम् ।' and is supported by कतराचन (611 q. by नि. र. p. 84) 'अनुमार्गेण कार्येषु अप्य-  
स्मिन्वचनमगम । दद्यात्स्वमिति वा दृष्टः स हहान्वाविद्वन्द्वे. ॥' The *vyasaharsa* p. 144 quotes the very words of the *mita*. स्पुतिच. II. p. 182 and *vy. s.* p. 287 define अवहित as 'स्वमिन्ने रिधत् पराधममवहस्ते कुतम्' । 'वनिग्यामस्य च वसपा-  
पयोजनापेक्षया स्वयेदं मदीयं रक्षणाय मयेदं त्वदीयं रक्षति इति व्यतस्व ग्रहणम् ।' *mita*. 60 वा. II. 67.

784. यो पाचितकमादाय न दद्यात्स्वमिति । स निदृष्ट कतादृष्टावो दृष्टव्यश्च स वेदति च: ॥ कतराच. 610 q. by अपराधे p. 664, स्पुतिच. II. p. 184, नि. र. p. 92. This shows that he could at once resort to the remedy of वत्त.



agreed) for finishing the work he should be made to pay (its price) even if the article was lost through act of God, but the artisan shall not be liable to pay the price if the article were to be lost through defects in the article itself; if (however) what is delivered for being worked or polished is destroyed through the fault of the artisan he should be made to pay the price<sup>785</sup>.

From the fact that Kat. 596 (quoted above in n. 778) employs the expression '*dāpyah sa eva tu*' (he alone who misappropriates or causes loss of a deposit by negligence), the words of Gaut. XII. 39 (quoted above under *ādhi*) and the fact that *nīkṣepa* is a title distinct from *ṛatādāna* (under which alone the liability of sons, grandsons, and great-grandsons is expressly declared) it follows that sons are not liable for the misappropriation or loss of a deposit or article bailed to their father or other ancestor provided they have not themselves joined or helped in the embezzlement or loss. This is made clear by Haradatta on Gaut. XII. 39, the Vivādacintāmaṇi and the Vivādacandra quoted below<sup>786</sup>.

It is interesting to note that Nār.<sup>787</sup> V. 15 places on the same level (as to liability for loss) with the depositor and the like the man who takes in his charge a minor that has a good deal of wealth i.e. the person undertaking the position of the guardian of a minor's property has to take as much care of it as of his own and is liable in the same circumstances as a

785. 'यैव सन्निकषते ग्याप्तो विप्रसौ परिनिश्चितः । तदूर्ध्वं स्वापेक्षित्वादी दाप्यो देव-  
तोप तत् । ग्याप्तदोषादिनाशः स्वापिहित्वात् तत्र दापयेत् । दापयेत्स्वित्वादीदाप्याप्तसंस्कारार्थं  
नद्विषयः । कात्या. 603-604 q. by स्मृतिच. II, p. 183, परा. मा. III. p. 288, नि. र.  
p. 98. The example of 604 given in Sm. C. and others is old clothes  
delivered to a washerman and torn in the process of cleaning. Compare  
Sec. 161 of the Contract Act with verse 604.

786. न केवलं पुत्रानि नाम्नामपेक्षुः किं तर्हि येषां सकाशे निष्पादयः कुलास्त्राग्ये  
नाग्यामवन्ति । इदं तुल्यं च योः XII. 39; कात्यायनः । ग्याप्तदोषः ... दाप्यः स तुल्यं तत् ।  
एवकारेण स्वपराधमन्तर्गतदोषादित्थमपेक्षेद् । तथा च नाप्यामपेक्षुरित्यधिकारे गौतमः  
निष्पन्न ... रापेक्ष । सर्वानुधादीक्षितपराधान् । वि. क्रि. p. 26; चितुपराशे तु तदूर्ध्वसौ  
ग्याप्तः पुत्रादिना न दप्यः । अयातिरिक्त्यत्यादिसि यहातिरिक्त्यातिमाणातिरिक्त्यात् यत्नकार-  
णानिनामुक्तानां सर्वेषामन्तर्गतत्वेनापेक्षे दापयेत्तिसङ्ख्यत् । अयादित्थमपेक्षेत्तत्तत्तत्तत्तत् ।  
विवादचन्द्र p. 27.

787. नलिपुष्टमिति योग्यं यश्च समर्थः नरः । तस्याप्येष भवेद्गर्भः योने विपक्षः समः ॥  
नारद V. 15. नारद IV. 33 defines दोग्धु as a synonym of बाल (a minor, up to  
the 16th year) 'बाल आ दोषशब्दार्थयोग्य इति श्रवते'. Gaut. XII. 34 And मनु  
VIII. 148 employ the word.

depositee would be for loss of the minor's property. Vide section 27 of the Guardian and Wards Act (VIII of 1890) for the care required of a guardian<sup>788</sup>.

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788. The British India Courts have been very much exercised over the question of the liability of ancestral property in the hands of the son for the obligations incurred by the father by his misconduct or embezzlement either as agent or manager for another or as guardian of a minor's property. It would follow from the passages quoted in n. 786 that ancestral property in the hands of the son is not liable, acc. to some of our digests, if the father used or lost a deposit or loaned article by his negligence or mismanaged a minor's property. It is firmly established that the son is not liable for a debt incurred by the father in circumstances which would render the father liable to a criminal prosecution. Vide *Toshanpal Singh v. District Judge of Agra* 61 L. A. 350. In the latest case on the point, *Govindprasad v. Raghunathprasad* 41 Bom. L. R. 589 (F. B.) the exemption is carried further and it is recognized that as to the exemption of the son for '*avyāt-ahārika*' debts of the father, there are many cases which cannot be reconciled, that it is repugnant to good sense to construe ancient texts in the light of a system of criminal jurisprudence developed long after and that the correct rule is to hold that 'the son can claim immunity when he proves that the debt of the father was of a character which was illegal, dishonest or immoral (p. 602)' though difficult cases may arise in the application of this rule. It would be far beyond the scope of this work to cite or discuss the other numerous decisions.



## CHAPTER XVII

### ASVĀMIVIKRAYA (sale by one not the owner).

The different modes of the sources of ownership have already been referred to (H. of Dh. vol. II. pp. 130 ff) and will be referred to again under *dāyabhāga*. According to Nār. VII. 1 and Br. (SBE vol. 33 p. 335 verse 2) when<sup>789</sup> a person, who holds an open deposit, a sealed deposit, an article bailed for delivery to another, stolen property, an article borrowed for some festival, a pledge, or property lost by a stranger and found (by him), sells it in secret (or behind the back of the owner) it is to be considered as a sale by one who is not the rightful owner. Vyasa has a similar verse. The word 'sells' is only illustrative and includes gifts and pledges. Similarly as most sales by one not the owner are clandestinely brought about, Br. employs the words 'in secret' but even if the sale is effected openly the same consequences may follow. The same rules will apply to an article lost by the owner and found by a stranger. Kat. (612) provides<sup>790</sup> that a sale, gift, or pledge, made by one who is not the owner, should be rescinded (by the king or judge). Manu VIII. 199 and Nār. (q. by Sm. C. II. p. 213, V. P. p. 291) and others say the same thing. Yāj. II. 168, Nār. VII. 2 provide that the owner is entitled to recover his property from the person that purchases from one who is not the owner. If the buyer purchases an article not in the open market, then he is liable for punishment; if he purchases from one who could have no means of possessing the thing sold (such as a slave without the master's consent) or for a very inadequate price or at a very unusual hour (at midnight or

789. विक्रीर्त्तुं वा परमृष्ये नटं लम्बापह्वय वा । विक्रीयतेऽननसं यद्विज्ञेयोऽस्वामिविक्रयः ॥  
शारद VII. 1: विक्रीयान्वाहितान्वासद्वनवाचितवन्धकम् । उपोक्षु येन विक्रीतमस्वामी मोहि-  
यौपते ॥ इह. q. by स्मृतिच. II p. 213 स्व. य. p. 290: वाकितान्वाहितान्वासं इत्या-  
चार्यस्य पद्वन्म । विक्रीयते स्वाम्यभावे स ज्ञेयोऽस्वामिविक्रयः । व्यास q. by स्व. म.  
p. 195, स्व. य. p. 290.

790. अस्वामिविक्रये दानमापि च विनिक्रियेत् । कात्या. 612 q. by the मित्र. on  
पा. II. 168, परा. वा. p. 291, वि. र. p. 104. The स्व. म. p. 291 takes अस्वामि-  
विक्रयं as one word 'अस्वामिना कृतं विक्रयम् । अस्वामिकृतं दानादप्येवमपि लब्ध-  
वर्णम्', while स्व. म. p. 195 says अस्वामि is a separate word and an adverb.  
The latter had to explain in this way in order to directly connect the absence  
of ownership with all the three kinds of transactions.





vendor selling another's article through ignorance or mistake and one doing so with full knowledge. The person who has lost a chattel and claims it from the finder is described as *nāṣṭika*<sup>794</sup> in Kauṭ. III. 16, Mam. VIII. 202, Kāt. ( 614 ) and elsewhere, the word being derived from *naṣṭa* ( what is lost ). The idea is that openly purchasing an article in the presence of a number of people for an adequate price negatives fraudulent intent and leads to the inference of a purchase in good faith and such a purchaser even though he may have to part with the chattel to the real owner when the latter proves his title, incurs no blame and is entitled to recover from the vendor, if he has to surrender the article, the price paid by him. When a person claims a lost article as his he has first to prove his title and possession by evidence ( such as that of his kinsmen or a document &c. ) and that he had not sold or donated or abandoned it ;<sup>795</sup> after he has proved his title the purchaser is called upon to prove his purchase as honest by evidence i. e. by producing the vendor or by showing that he purchased openly and for adequate price ( Kāt. 613, Yaj. II. 170 ). When this is done the purchaser escapes blame but has to surrender the article to the true owner. Kāt. ( 616 ) adds<sup>796</sup> that in the case of ' *asvāmi-vikraya* ' no other means of proof whether divine or human ( except the evidence of witnesses such as kinsmen ) is declared to be proper. Acc. to the V. P. p. 293 other evidence and even ordeals may be admissible in sale without ownership, but the Sm. C. p. 216 and the Madanaratna say that on account of the express words of Kāt. this is not possible. If the owner who alleges the loss of an article fails to prove his title and prior possession he has to pay a fine to the king equal to  $\frac{1}{4}$ th of the price of the article. Kāt. ( 620 ) and Kauṭ. ( III. 16 ) state that on failure to prove his title the person claiming<sup>797</sup> the article as his should be fined as a thief, in order to deter ( others ) from taking undue advantage ( i. e. preferring false claims ). Kauṭ.<sup>798</sup> III. 16 and Yaj. II. 169

794. नष्टमन्वेष्टे नाष्टिकः । नष्टमन्वेष्टीत्यर्थे ऽनि कुले प्रजाद्विवाहस्यधिकोऽयं कर्तव्यः । मते प्रयोजनमस्तेति वा । मिथ्या on मनु VIII, 202. The sūtras referred to are पाणिनि V. 2. 113, V. 4. 38 and V. 1. 109.

795. नाष्टिकस्तु प्रकुर्यात् तद्धनं ज्ञातुमिः स्वकम् । अद्वयत्पक्षविक्रीनं कुत्सा स्वं सन्नेषे धनम् । कात्या. 614 q. by अपराकं p. 777, वि. र. p. 104, म. वि. p. 306

796. नकारो च जपे कुर्वाणानुमिज्ञातिभिः स्वकैः । न तत्रान्या विद्या सोका द्वैतिका न च मातृवी । कात्या. 616 q. by अपराकं p. 717, परा. मा. 296, वि. र. p. 106

797. यदि स्वं नैव कुले ज्ञातिभिर्नाष्टिको धनम् । पसहनिनिहृष्ये चौरवद्वन्द्वमर्हति । कात्या. 620 q. by अपराकं p. 777, वि. र. p. 103, परा. मा. III. p. 297.

798. नष्टपद्वन्द्वमासाधे स्वामी धर्मस्थेन बाह्येन । देशकालान्तिवर्त्तो वा स्वप्ने कृतीलो-पहरेत् । अर्थशास्त्र III. 16.

provide that when the real owner finds his lost article in the hands of a stranger he should get him apprehended by the royal officers (such as *chauroddharagika*, acc. to Mit.), but that if the owner thinks that much time will be lost or distance will have to be traversed (for going to officers) he should himself seize the person and bring him before the court. The Mit. explains that the buyer should have the seller arrested and, if the seller is dead or gone abroad, that he should hand over the article to the real owner. Where a purchase has been made in the midst of a row of traders to the knowledge of the king's officers, but from a vendor whose habitation was unknown or where (after the purchase) the vendor dies, the real owner (of the thing sold by one not the owner) will recover his own property after paying half the price to the purchaser, since the rule of justice in such a case so requires, because to purchase from one (whose habitation is) not known is a fault (in the purchaser) and not taking proper care (of one's goods) is also a fault in the real owner (Br. in S. B. E. vol. 33 pp. 335-36 verses 7-9 or Kāt. 621-623)<sup>799</sup>. Marici (q. by Aparārka p. 775, Sm. C. II. p. 217) has similar provisions. Br. (S. B. E. vol. 33 p. 335 verse<sup>800</sup> 6) provides that in a suit where there is no evidence the king shall take into consideration the character of the litigants and give a decision according as the credibility of the parties is equal, greater or less.

As regards articles lost and found by the king's officers, vide above (pp. 175-176).

799. अविज्ञातीयापरिग्रहे विज्ञाते राजपूरुषैः (अविज्ञाताश्चपाद् जीते विज्ञिता एव वा युक्तः) स्वामी द्वाराधर्मपूर्वं तु प्रवृत्तिं स्वकं धनम् । अर्थं द्वयोरेवार्थं तत्र स्वाङ्गव्यवहारतः ॥ अविज्ञान-  
कयो दोषसंज्ञा चापरिगालनम् । एतच्च द्वयं सम्यक्पार्तं द्वन्द्वानिर्णयं द्रष्टुं ॥ इदं, acc. to  
अपरार्क p. 773, कुत्सुक on मनु. VIII. 202 (the first two only), and कात्या  
acc. to स्मृतिच. II. pp. 216-217, परा. मा. III. pp. 297 and 300, च. व.  
pp. 295-296. Law helps the vigilant. The rules under 'asvāmīvikraya'  
are based on the doctrine that no one can confer a better title to the goods  
sold than he himself has (vide section 27 of the Indian Sale of Goods Act IX  
of 1930). The verses recognise an exception in cases where both purchaser  
and the real owner are equally at fault.

800. सम्यक्पार्तिनादे तु दुरुधर्मेक्षणा युक्तः । नतान्मुलाधिकतेन स्वयं कुर्याद्विनिर्णयम् ॥  
इदं, q. by स्मृतिच. II. p. 216, मि. र. p. 108.



## CHAPTER XVIII

### SAMBHŪYA-SAMUTTHĀNA <sup>603</sup>

(A joint undertaking, partnership).

Where traders or others (like actors, musicians or artisans) carry on a business jointly it is termed a partnership (Nār. VI. 1 and Kāt. 624).<sup>602</sup> Br. (SBE vol. 33 p. 336 verses 1-2) says that a man should carry on a joint business with other persons of good family, that are clever, active, intelligent (or educated), familiar with coins, skilled in (controlling) expenditure and income, honest and valiant (or enterprising) and that joint undertakings like trade should not be carried on by prudent men with persons (partners) who are weak or lazy or afflicted with disease or are unlucky or destitute (of money).<sup>603</sup> The meaning is not that all the above qualities must exist in all partners, but that according to the nature of the undertaking some of these qualities will be absolutely necessary. Nār. VI. 2-3, Yāj. II. 259, Br. (SBE vol. 33 pp. 336-337 verses 3 and 4) prescribe that the expenses, loss, profit or work of those who jointly lend gold, grain or liquids shall be according to the capital put in by each.<sup>604</sup> The duty of each is to act honestly towards the others, whether they are present or absent,

601. सम्भूय is the indeclinable past participle of the root भू with सम् and means 'having formed together or come together' and सम्भूयान् means 'undertaking'. So the two words mean 'undertaking in which are joined together' (labour, capital or both).

602. समवेतास्तु ये केचिच्छिन्विनो वज्जेजोद्गणि वा । अविभज्य दृगम्भूतैः पाते तत्र कले समम् ॥ कात्या 624 q. by अपराके p. 632, परा. म. III. p. 304.

603. कुर्वन्तदुदागमलैः पात्रैर्नामकवेदिभिः । अवयवपङ्क्तैः श्रुतिभिः पुरैः कुर्वन्तस्त्रिक्रियाम् ॥ अजाकलसरोजोत्पन्नद्वुभावनिराभयः । वाणिज्यवादा सर्वतस्तु न कर्तव्या कुपैः क्रिया ॥ बृह. q. by स्मृतिक. II. p. 184, अपराके pp. 831-832. 'महत्क्रिया वाणिज्यकृषिभित्तकतुसमीपस्त्रीयाक्रियाभिः ॥ तत्र वाणिज्यक्रिया नामकवेदिभिरावयवपङ्क्तैः सम्भूय कार्या । कुपैःक्रिया तु अवयवपङ्क्तैः शिन्वीक्रिया संवीतक्रिया च वर्तते ॥ स्मृतिक. II. p. 184.

604. पणैर्न कुपैर्न वे तु हेमपादरसादिना । समभूयाधिकैरौर्तामलेषां त्रयाणि ॥ मन्तेऽभूयोधिको ततो येन क्षितस्तथैव ॥ इयं द्रव्याकनं कुपज्ञाने दुर्ज्ञातं चैव हि ॥ बृह. q. by. स्मृतिक. II. p. 183, म. म. p. 298. अपराके p. 832. attributes the first to कात्यायन.

in sales or purchases of various commodities.<sup>805</sup> Br. (SBE vol. 33 p. 337 verses 5-7) provides that whatever<sup>806</sup> property one partner may give (or transfer), being authorised to do so by the rest, or whatever document (or transaction) he may cause to be executed, all that is to be deemed as done by all partners; the partners themselves are declared to be the judges (the deciding persons) or witnesses among themselves in a doubtful case and in case of fraud, provided they are not already at feud among themselves. It follows from this that by entering into an agreement of partnership, each partner agrees that he submits to the decision of the other partners in cases of doubt. If any one from them is found out to have practised fraud on the others in sales or purchases he should clear himself by special oaths or ordeals. Yāj. II. 260, Nār. VI. 5,<sup>807</sup> Br. (SBE vol. 33 p. 337 verse 9) provide that each partner is responsible to make good what has been lost through his negligence or in consequence of his acting against the instructions of the others or of his acting without their authority or consent. If any one of the partners saves partnership property from act of God or the king or thieves (or similar calamity) by his own exertions he is to be awarded (as his special share) one tenth of the property saved (Yāj. II. 260, Kāt. 631,<sup>808</sup> Nār. VI. 6). If any partner is crooked or fraudulent the rest may expel him without giving him any profit; a partner who is incompetent to work (personally) should get the partnership business done through another (Yāj. II. 265). Yāj. II. 264 and Nār. VI. 7 and 17-18 state that if one partner

805. समसमममर्गं वाञ्छजपन्तः परस्परम् । नानापण्यानुसारान्ते वक्तुम् । कथयिष्यौ ॥  
 व्यास q. by खुलिच. II. p. 185, अपराक p. 832. Compare sec. 9 of the Indian Partnership Act (IX of 1932) about the duty to be just and faithful.

806. बहुर्वा संन्यो वस्तु दद्यादेको जने नरः । करणं कारयेद्वापि सर्वेरेव कृतं भवेत् ॥  
 परीक्षताः साक्षिणस्तु न एकोक्ताः परस्परम् । सन्दिग्धेषु वज्रनाथो न चेद्दिद्विषमंभुताः ॥ यः  
 कश्चिद्वज्रफलेषां विज्ञातः कथयिष्ये ॥ उपर्यैः सोपि शौच्यः स्वाद्य सर्वदादेवर्षं विधिः ॥  
 बृह. q. by यद. न. p. 200, वि. र. pp. 113, 123, यद. न. p. 259; अपराक p. 832 has  
 all these, ascribes the first to कारणा. and reads कथे च कारये. What is meant  
 is that when one partner raises an objection they have to decide what is  
 to be done by a majority (and so they are judges in their business). Vide  
 sections 12 and 18 of the Indian Partnership Act as to the decision by the  
 view of majority and as to agency of partners.

807. यमावृत्ताग्निं द्वापः ॥ लिपिद्वक्तं च नत् । असन्दिग्धं वाकुर्वान्तरंभुता-  
 निभिः ॥ नारद VI. 5.

808. चोक्तः सल्लदग्नेर्द्वयं वस्तु समाहृतम् । तस्यांशो दद्यान्ते सर्वद्वयधेनवं  
 विधिः ॥ कारणा. 631 q. by परा. मा. III. 305, वि. र. p. 114.



goes to a foreign country and dies, his share should be taken by his heirs ( son &c. ) or by his agnates or cognates ; in default of these the other partners may take it and in default of them the king may take it after waiting for ten years to see whether any heir or claimant turns up. Kātyāyana<sup>809</sup> states that in the case of artisans who together carry out some work, those among them who are directors of new methods get four shares, those who are adepts in the craft three shares, those who have studied the craft two shares and the apprentices only one share. Whatever is given to strangers by all together ( i. e. by the partnership firm ) should be claimed back by the firm as such ; any single partner should not claim it ; if he does so he will lose his share of the profit<sup>810</sup>. Some rules are prescribed by Br. that among dancers, singers and musicians, the singers get equal shares ; while those who beat the tune only get half share each ; similarly in the joint construction of a mansion or a temple the head of the artisans gets two shares. An artisan<sup>811</sup> (*śilpīn*) is one who manufactures or works upon gold, silver, yarn, wood, stone and hides or one who has mastered one of the ( 64 ) arts. If a king has ordered a band of adventurers from among his subjects to make a plundering expedition in enemy country, Br. ( in V. R. p. 125 ) and Kāt. ( 633-635 )<sup>812</sup> prescribe that the king gets one tenth (  $\frac{1}{10}$  acc. to Br. ), the leader gets four shares in the remainder, the valiant among his followers three shares, the more capable two shares and the rest one each and that if any one of them is caught the money for his ransom should be contributed by all according to their shares. When no agreement is made as to shares in property by traders, husbandmen, thieves and artisans similar rules apply<sup>813</sup>.

809. शिल्पकारिभिरुपकृता आचार्याश्चेति शिल्पिनः । एकदिविचतुर्भोगान्धरेषुले वषा-  
त्तरम् ॥ कात्या. 632. q. by स्प. म. p. 303, अपराके p. 333, नि. र. p. 124.

810. समंकेतुं पदंते धर्मनीयं तथैव तत् । न याचेत च यः कश्चिद्भाग्यं परिहीनो ॥  
बृह. q. by अपराके p. 333, नि. र. p. 123, स्प. म. p. 300.

811. शिरपयस्वसुखाणां काउपायाणचर्मणाम् । सेरुहो च कदाभिज्ञः शिल्पी चोक्तो  
मनीषिभिः ॥ बृह. q. by नि. र. p. 124, स्प. म. p. 304 ( reads शिरपयकुट्टः )

812. परराष्ट्रादृतं यत्तयान्चौरैः स्वाम्राज्यं हृतम् । राज्ञो दशभाग्यं द्रष्टव्यं विभजेत्य-  
धारीभिः । चौराणां सप्तयुक्तस्तु चतुरोर्भास्वो हरेत् । चुरोर्भास्वमग्नौ द्वौ केषास्वैकमेव  
वा ॥ तेषां चैवमदतानां यो हृत्तुं समर्थास्तथा ॥ तन्मोक्षणार्थं पदंते वहेषुरते धर्माज्ञतः ॥  
कात्या. q. by स्मृतिच. II. p. 189, पंच. नि. p. 286, परा. मा. III. 311,  
स्प. म. p. 303.

813. यणिकं कर्मकायां च चौराणां शिल्पिनां तथा । अभिदग्मांश्चकृण्वं सर्वेधामि  
निर्णयः ॥ कात्या. q. by स्प. म. p. 303, परा. मा. III. p. 312, नि. र. p. 126.

It is interesting to note that the ancient Dharmasūtras of Gautama, Āpastamba and Baudhāyana are silent about partnerships, but Manu (VIII. 206-210) lays down rules about the distribution of fees among the priests at a sacrifice and that in one verse (VIII. 211) he remarks that the same principles are to be applied in all matters where men work conjointly (i.e. each is to be paid according to the importance and volume of the work he does). The rules about sacrificial priests in Manu are: If a priest chosen to do work in a sacrifice abandons his work a share only of the fee in proportion to the work (done) shall be given to him by those conjointly working with him; if a priest leaves after the fees are distributed (as at the time of midday extraction of Soma in the great sacrifices like Jyotiṣṭoma) then he keeps the whole of it and shall cause the remaining work to be performed by another (who will be paid by the sacrificer, acc. to Medhātithi). When specific fees are prescribed to be paid to individual priests at the performance of the several parts in a complicated sacrifice, the individual priests are to receive them and all are not to participate; as for example, the adhvaryu takes the chariot, the brahmā priest takes the horse in Agnyādhāna, the hotṛ also takes the horse and the udgātṛ the cart used in purchasing the soma plant. The four chief priests are entitled to one half of the fees, the first group of their assistants will get half of what the chief ones get, the 2nd group  $\frac{1}{4}$  and the fourth  $\frac{1}{8}$ . Nār. VI. 10 and Br. (in V. R. p. 120) state that sacrificial priests are of three kinds viz. one hereditary and honoured by the ancestors of the sacrificer, one appointed by the sacrificer himself and one who performs the functions of his own accord through friendship and that (VI. 9 and 11) if an officiating priest forsakes a sacrificer who is free from any fault and who has caused no harm or if a sacrificer abandons a priest who is faultless, they both shall be punished but this does not apply to the third kind of priest. Śāṅkha-Likṛita, as quoted in V. R. pp. 117 and 120-121 and Sm. C. II. p. 188, give elaborate rules about sacrificial priests dying or leaving work and the fines to be imposed on them. Kaut. III. 14 lays down rules for the receipt of fees by priests when they leave off at different stages of such solemn sacrifices as the Agniṣṭoma and also when the sacrificer dies without completing the sacrifice. The Vy. Nir. (pp. 284-285) quotes a few sentences from Kaut. III. 14.

The above shows that in the times of the ancient sūtras, secular partnerships had not attained sufficient importance and





## CHAPTER XIX

### DATTANAPAKARMA (resumption of gift).

This title is also called *dattāpradūmika*<sup>815</sup> (lit. that which is concerned with the non-delivery or resumption of a gift). Nār. VII 1 defines it as that title where a man desires to resume what has been given by him because it has been improperly (in a manner opposed to law) given by him. Nār. (VII 2) divides this title into four topics viz. what may not be given, what may be given, what are valid gifts and what are invalid gifts. Nār. VII. 3-5 and Br. (SBĒ vol. 33 p. 342 verse 2) state that there are eight things that cannot be given (*adeṣṭa*) viz. an *anūhata*, a deposit, *yūstaka*, a pledge, property jointly owned with others, a deposit, son and wife, the entire property in the case of one who has offspring, and what has been already promised to another. Vide Kauṣ. III 16, Yaj. II 175<sup>816</sup> for a similar but more compendious statement, and Kā. 638. These cannot be given either because they are not one's absolute property or because the gift of them is forbidden by the sages. In the case of even those who hold that one has ownership over one's son or wife, the gift of them is not possible because it is forbidden, just as though one owns rice, *paṇṣa* and *māṣa* beans, one cannot make offerings of *māṣa* because the veda prohibits their use in the words 'ayajīlyā vai māṣāḥ' (q. by Śabara on Jai. VI 3. 20). So son and wife cannot be given on account of the prohibition in the smṛtis. The general rule of what may be given is stated

815. वेदातिथिः on मनु. VIII. 214 explains it as अपादिता दत्तनापायः तस्य तत्तामसिधेयः । दानमेवं न चक्षितं भवति । एवैव दाने निमित्तेति वाच्यम् । अथ तद्विद्वत्पादोक्त-  
मात्रे धर्मो न वाचनीति नैका शङ्का कार्यया । अथ एवात्र धर्मो यत्र क्षिते दाने न तत्पादोक्तः ।  
So acc. to this दत्तनापायकर्म means "not improper abstraction of what is given or promised to be given." The *mitra* on Yaj. II. 175 explains both दत्तनापानिधेय and दत्तनापायकर्म as follows: दत्तस्य अपादाने दानवर्णं यस्मिन् दानात्तमे तद् दत्तनापानिधेयं नाम प्रवृत्तारण्यम् । ... दत्तस्य अनेपायकर्म अपुनरादाने यत्र दानाकर्म विनादुपये तद् दत्तनापायकर्म. Acc. to this दत्तनापायकर्म means "that in which what is donated cannot be taken back because the gift is according to law" (also impliedly the converse of it).

816. सर्वस्य दत्तद्वारमाज्याने यद्वापादुपनिधेयः स्वयत्तेन । अर्थस्तथा III. 16. साधारण-  
दत्तद्वाराभिर्नैवैतन्नापायकर्मचिह्नम् । यस्मिन् दत्तनापानिधेये तद्वत्वा दत्तम् ॥ बृह. ५. ५. ५. by  
रसुमिच. II. 189, ५५, ५. p. 306; similar verses of Nār. VII 4-5 and Dākṣa III. 19-20 have been quoted in (H. of Dh. vol. II. p. 350 n. 3003).



by Yaj. II 175, Nār. VII 6 and Br. (SBE 33 p. 342 verse 3), Kāt. 640 viz. whatever is absolutely one's own excepting that required for the maintenance of one's family may be given.<sup>817</sup> Manu (XI 9-10), Nār. VII 6 and Br. (quoted in H. of Dh. vol. II pp. 850-851 n. 2007) condemn those who stint their family or servants in order to be charitable to others and say that he who does so would incur sin. Manu XI 7 (= Nār. VII 7), Vas. VIII 10, Yaj. I 124, Visnu Dh. S. 59.8 prescribe that he alone who has property sufficient to provide for three years' maintenance for those whom he is bound to maintain or has more wealth than that may drink *soma* i. e. may engage in a soma sacrifice (which costs much).

Nār. VII. 8 states that there are seven kinds of *datta* gifts, i. e. gifts or transfers that cannot be resumed because they are made by a person in full possession of his faculties and of things that belong to him absolutely and are not forbidden. They are: the price paid for goods bought, wages, what is paid for pleasure (derived from dancing, singing, wrestling), a gift through affection, a gift made in gratitude, money paid to a bride's kinsmen, and gifts for spiritual or charitable purposes. Acc. to Br.<sup>818</sup> (SBE vol. 33 p. 343 verse 8) there are eight kinds of valid gifts. Nār. VII. 9-11 mentions sixteen kinds of invalid gifts, which have already been set out (in H. of Dh. vol. II p. 887 where Gaut. V. 22 that specifies some invalid gifts has also been cited). Vide Kāt. 647. The difference between gifts of *adēya* and *adatta* gifts is this. In the first class of cases, the gifts being forbidden are entirely null and void, while *adatta* gifts are those that are voidable and may be set aside by the court on the application of the donor himself, because, of the incapacity of the donor due to intoxication, lunacy, old age, minority, mistake etc. Kāt. 646 and Kaut. (III 13) state

817. सर्वसं युद्धर्जं तु कुटुम्बभरणायिकम् । यद् दत्तं तत्सर्वं वेचनदेयं स्यादतो-  
मय्य स कर्त्तव्यः. 640 q. by परा. मा. III. 214, वि. र. p. 129, स. वि. p. 283.  
Kāt. prohibits the gift of a house if a man owns only one.

818. भूया तुष्टया वश्यमूलं श्रीमुखमुपकारिणि । अज्ञातुग्रहणं वीत्या दत्तमद्विषं  
विदुः. 648. q. by मुनिच. II. p. 103. कर्त्तव्येन 644-645 explains भूति and उत्पुकार  
occurring in नश्य and कृद्., the first being a reward for finding out a lost  
article or an unknown offender and the second being a reward for protec-  
ting a man from danger or for guarding the donor's property when he  
was a minor or affecting some object desired by the donor (such as his  
marriage &c.)

that if a man<sup>819</sup> is in danger of life and promises the gift of all his property to whomsoever may save him, he may renege from the promise and pay only what an expert or arbitrator may award. Kāt. (650-651) defines *utkoṣa* (bribe)<sup>820</sup> as what is obtained in these ways viz. by giving (or threatening to give false) information about a person as a thief or a felon, or as one who breaks the rules of decent conduct, or as an adulterous person, or by pointing out those who are of bad character or by spreading false reports about a person. He further provides that a person offering the bribe should not be fined, but the intermediary may be fined and if the person accepting the bribe has been appointed to an office by the king he should be made to return the bribe and pay a fine eleven times as much to the king. But Kāt. adds that where a person not holding a public appointment obtains some gratification for work done, he would not be held guilty and would not have to return what he received as a reward or in gratitude. *Hārita* holds out<sup>821</sup> other-worldly evil consequences for not actually delivering what is promised or for resuming what has been already delivered as a gift viz. the person doing so falls into Hell and is born as one of the lower animals and adds that what is promised as a gift for a religious purpose in so many words but is not actually delivered becomes a debt in this world and the next i. e. the king should make the promisor give the

819. वाणसंज्ञमपक्वं यो मामुत्तारयेद्वित् । सर्वस्य तस्य दास्यामीत्युक्तेषु न तथा भवेत् ॥ कात्या. 646 q. by अथर्वकं p. 781, वि. र. p. 134, स्मृतिक. II. p. 193; नदीविश्वनाथाल्लोचनपालोपकण्डः सर्वस्वपुत्रद्वारात्पदानेनार्तक्षतारमाशुचि निर्णीतः कुशलवदितं वेतनं दद्यात् । तेन सर्वार्थदानाशुश्रूषा व्याख्याताः ॥ अथर्वशास्त्र III. 12.

820. स्तेनसाहसिकोद्भूतपारजायिकसंज्ञनात् । दर्शनाद् वृत्तमदस्य तयासत्यपुण्यं-नात् । प्राप्तमौत्सु यत्किञ्चित् तदुक्तोच्चारयमुच्यते । न दाता तत्र दण्ड्यः स्वयम्भारथश्चैव दोषनाह । निपुक्तो यस्तु कार्येषु स चेदुक्तोचनमुपाय । स वाणसंज्ञने कुलम् वृत्त-कादृशाधिक्य ॥ अभिपुक्तस्तु कार्येषु दुक्तोचं यममायवात् । कुतस्तदुक्तकार्येणैतस्य दोषो न विद्यते ॥ कात्या. 650-653 q. by स. वि. 266, अथर्वकं 782, परा. मा III. 320, च. म. p. 312, च. म. p. 305. The Indian Penal Code, section 116 (illustration a) read with sec. 161, makes one who offers a bribe to a public servant punishable as an abettor. The ancient Indian law exempting the offeror from punishment would appear to be more reasonable from certain points of view.

821. प्रतिश्रुतार्थदानेन दत्तसंवाङ्मिदमेव च । विविधाश्रकान् पाले तिर्यग्योनीं च जाले ॥ वाचैश्च पयस्त्रिजाले कमेया नोपपादितम् । कर्णं तदुर्मसंयुक्तमिह शोके परमं च ॥ हारीत q. by च. म. p. 310, विवादचन्द्र p. 36, स्मृतिक. II. p. 192 which remarks 'कर्णवदित्पमिधानेन अर्थाद्वनदापको दातयो दण्ड्यश्चेत्युक्तम्'. स. वि. p. 283 ascribes the first verse to कात्या, and reads 'कर्णकोदितले कर्णवदित्पमिधानेन'.



promised gift and should inflict a fine. Kāt. (642) provides<sup>822</sup> that a man who having voluntarily promised a gift to a brāhmana does not deliver it should be made to render it as a debt and should be awarded the lowest amercement and further (verse 566) that if a man promises a gift for a religious purpose whether in good health or in disease, his son (or other heir) should be made to pay it if the promisor died without actually delivering it. These verses show that in two cases gifts though not completed by delivery of possession were enforced by ancient Indian courts viz. when the gift was promised to a brāhmana or when the gift was declared to be made for a religious and charitable purpose. The last verse contains the beginnings of the idea of a will, since the mere declaration of the intention of a man to give for a religious purpose is made enforceable after his death against his son or heir. But this germ could not evolve into a full-fledged law of testamentary succession on account of the practice of adoption, the requirement that a gift must be accompanied by present possession and the incidents of the joint family on account of which no single member could alienate family property except for legal necessity and which involved the doctrine that on the death of a member his rights ended and passed by survivorship to other members. Br. expressly states this.<sup>823</sup> But a gift though promised need not be paid or carried out if the promisee turns out to be an irreligious man (Gaut. V. 21), Nār. VII. 12 and Br. provide that he who enjoys an invalid gift and he who makes a forbidden gift are both to be punished by the king.<sup>824</sup>

In H. of Dh. vol. II. p. 841 it has been stated that gift consists in the cessation of the ownership of the donor in a thing and creating ownership in another. This latter is effected by acceptance (*śikṣā*) by the donee. Acceptance may be made mentally, vocally or physically. For the formalities accompanying a gift such as sprinkling water on the thing donated and the

822. स्वेच्छया यः प्रतिभूय ब्राह्मणाय पतिग्रहम् । न दद्याद्यथेच्छायाः प्राप्नुयात्पूर्व-  
साहसम् ॥ कात्या. q. by स्मृतिच. II. p. 192, स. नि. p. 285, स्व. न. p. 310; स्वस्थे-  
नार्तेन वा द्वेपे आर्पितं धर्मकारणम् । अद्वया तु दृष्टे द्वापस्तमुत्ते नात्र संशयः ॥ कात्या-  
q. by वि. वि. p. 16, स्व. न. p. 313, स. नि. p. 287, विवाद-सूत्र p. 37; प्रतिभूय-  
पदातारं सुवर्णे दण्डयेच्छतः । मातृपुत्राण 227. 8 q. by स्व. न. p. 310; प्रतिभूयत्वापचय-  
संशुक्ताय न दद्यात् । गौ. V. 21.

823. मनुष्यमिति यद्वत् न तत्सत्तावर्गं भवेत् । तेनेदानीमद्वत्तत्तावर्गं रिशिशमत्तावेत् ॥  
बृह. q. by स्व. नि. p. 298.

824. अद्वत्तभोक्तुं दण्ड्यः स्वाध्यायैयमदायकः । बृह. q. by स. नि. p. 288.

offering of a *dakṣiṇā* to the donee, vide H. of Dh. vol. II p. 855. Some writers like Jimūtavāhana dispute the statement<sup>825</sup> that acceptance is necessary to constitute a gift. The *Dāyabhāga* states that by the mere relinquishment of a thing by the donor (i.e. by the activity of the donor himself) the ownership of the thing passes to the person intended as the donee, that the ownership of the other man does not arise by acceptance, that though ownership in the donee does arise by the mere activity of the donor, yet acceptance (*svikāra*) which is an activity of the donee makes the thing donated capable of being disposed off by the donee as he likes on account of his idea 'this is mine'. The *Dāyabhāga* indulges in casuistical reasoning in support of its view, which it is not necessary to set out here. But the remarks of the *Dāyabhāga* are not satisfactory, since it does not adequately explain what is to happen if the intended donee refuses the gift. On its hypothesis ownership has passed to the donee without acceptance being necessary. If the donee refuses, or dies without accepting, who is the owner? Can it be said that the thing becomes the property of whosoever first takes it up and that the donor cannot prevent a third person taking it up? The V. P. pp. 426-428 severely criticizes the *Dāyabhāga* for its views.

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825. इष्टं च लोकेऽपि दाते हि चेतनोद्देशविक्रयवापदेन दातृत्वापाराधमपदानस्य द्रष्टे स्वामित्वम् । न च स्वीकरणात् स्वत्वं स्वीकर्तुरेव दातृत्वापत्तेः । ... उत्पन्नमपि स्वत्वं संयदागन्वापरिणमयेदमिति ज्ञानेन चचेद्व्यवहारायै क्रिया इति स्वीकारसाध्यायः । दायभागे 1. 21-24 pp. 13-15.



## CHAPTER XX

### VETANASYĀNAPĀKARMA, ABHYUPETYĀSUSRŪṢA AND SVĀMIPĀLAVIVĀDA

(Non-payment of wages, non-rendition of service, dispute between master and herdsman).

The question about the payment or non-payment of wages to those whose services are hired for work is dealt with under this title (Nār. IX, 1). According to Br. there<sup>826</sup> are three titles of law in which the question of hiring enters, viz. *abhyupetyā-susrūṣā*, *vetanasyānapākarma* and *svāmipālavivāda*. Manu and Kaut. do not treat of the first of these three. Here *vetanasyā-napākarma* will be first dealt with, then *abhyupetyā-susrūṣā* and *svāmipālavivāda* will be separately treated of. All these three topics are concerned with masters and servants or employers and employees. The rules are different according as the contract of service is for a fixed term or for an indefinite period or is for executing a definite piece of work and according as the rate of wages or the hire is fixed beforehand or is not fixed. We have further to remember that the rules are spread over a large period i. e. from about 6th century B. C. to about 500 A. D. (from Gaut. and Āp. to Br. and Kāt.). The rules deal with the liabilities of both masters and servants. Nār. IX, 2 states that the wages agreed upon may be paid at the beginning, in the middle or at the end of the work undertaken. But when no wages are settled beforehand Nār. IX, 3, Yāj. II, 194, Kaut. III, 827 13 provide that the (agent of a) trader, the cowherd, the husbandman should receive a tenth part respectively of the profit, of the milk and of the crops. This latter according to the Sm. C. II p. 201 holds good where the crops are raised easily. But Br.

826. अद्वैतादिकमात्राणां कृतावसुचयते विधिः । अशुभपान्दुरेयैतत्पदमात्रे निवृत्तते ॥  
पेतनस्यापयकर्म नद्वय स्वामिपालयोः । कामका करयते वादो भुविद्वयव विद्वत् ॥ बृह. in  
नि. व. p. 139. नि. वि. p. 41.

827. कर्मकालादुपमसम्भाषितवेतनः । कर्मकाः मर्यादां गोपालकः सपिंस वैद्वजः  
एवमात्मनामना-प्यवहतां दशमायमसंभाषितवेतनो दमेत ॥ अर्थशास्त्र III, 13 : कृतावनि-  
शितायां तु दशमायं समानुपुः । लाभगोपीतमस्थानां कलिगोपकृतिवत्ताः ॥ नारद IX, 3.  
This is ascribed to Kaut. by स. नि. p. 298.

(S. B. E. vol. 33 p. 345<sup>828</sup> verse 13.) lays down the rule that if the employer supplies food and clothing to the servant, the latter should get a fifth part of the crops (if no wages are settled) or a third part if the servant is given no food nor clothing by the employer. When no wages are settled *Vṛddha-Manu* prescribes that proper wages will be determined by experts in carrying<sup>829</sup> maritime trade (and other traders) who take into consideration the time, the place and the purpose. Even when the wages were settled the employer could give less or more according to his pleasure in certain cases viz. when a servant or agent acts against the restrictions of time and place prescribed by his employer and consequently the profit is much less, the employer may give less than what is agreed but if the agent brings more profit (than expected) he may give more (Yāj. II. 195). When two or more employees undertake to finish a work but cannot finish it (owing to ill-health or similar obstacle) each of them should be given the wages appropriate to the portion done by each (as settled by an arbitrator), but if the whole work is finished by them the agreed wages must be paid to all of them together (Yāj. II. 196). Yāj. II. 193, Nār. IX. 4 and<sup>830</sup> Br. state that it is the duty of the employed or servant to take as much care of the utensils supplied by the employer as he would take of his own, and that he should not act in that respect wantonly (or crookedly) and that if he did so his wages would become less. If a hired servant, after receiving his wages, does not do the work agreed to be done though able to do so, he should be made to repay to the employer the wages received and a fine equal to double of the wages and if he had not received wages but left the work without cause he should be made to pay to the employer

828. भक्ष्याद्यादभुतः सीराद्वानं कुर्वति पञ्चमम् । जालमस्यात् विभानं तु मण्ड्रीयाद्-  
धाभुतः ॥ बृह. ५. by स्मृतिच. II. p. 202, पर. म. p. 324, म. वि. p. 295.

829. मण्ड्वानकुशला वेदकालार्थवृत्तिना । निषेधोपुर्णं नो नु सा रथात् धामकृता  
पदि ॥ बृहस्पतय. ५. by वि. र. p. 155, पर. म. p. 124. The स्मृतिच. II. 202 ascribes  
it to Manu. Compare अर्थशास्त्र III. 13 'कारुमिणिकुशीलवचिकित्सकवाग्मीयनारि-  
चाक्रादिपश्याकरिकर्मस्तु पश्यापस्तस्यविधः कुशीलुः यथा वा कुशलाः कल्पपेदुस्तथा वेतनं  
मयेत ॥'

830. क्रियोपकरणे चैवां क्रियां परावृत्त्यादित् । तस्मिन्मासेन कुर्वति न विद्वेन समा-  
चरेत् ॥ भारद्. IX. 4. स्मृतिच. II. p. 203 and पर. मा. III. 324 read आग्रमासेन  
तद्वत् न जैत्रयेन &c. ; परावृत्तु न कुर्वति स्वामिनः शाल्यमन्ववि । युगिद्वानि समामोति ततो  
वाद् ; यवर्ते ॥ बृह. ५. by स्मृतिच. II. p. 202, पर. मा. III. p. 324.



an amount equal to the wages (Yāj. II. 193, Nār. IX. 5, Bṛ. in <sup>831</sup> S. B. E. vol. 33 p. 345 verse 15). Kaut. (III. 14) prescribes a fine of 12 paṇas for a hired servant who does not do the work undertaken even after receiving the wages and that he should be compelled to do the work. Nār. IX. 5 and Kat. 657 provide that the king should compel him to do the work and then the agreed wages may be paid to him; but if he does not do it he should be fined.<sup>832</sup> The fine in such cases acc. to Vṛddha-Manu was 200 paṇas, Manu VIII. 215 and Bṛ. (S. B. E. 33 p. 345 verse 16) and Matsya 227. 9 provide that a hired servant, who though not ill, does not arrogantly do the work agreed should be fined eight *ḥṣṇas* and would not get wages at all. This applies where a substantial portion is left undone, but where only a little of the work undertaken is left undone then the servant is not to be fined, but he would lose all the wages (Manu VIII. 217). But if a servant falls ill, then he may do the work after he becomes well and would get the agreed wages even if a long time may have elapsed (Manu VIII. 216). Kaut. (III. 14) also provides that if the servant suffers from illness or is overwhelmed by a calamity, concession may be given to him or he may offer a substitute. The Āp. Dh. S. (II. 11. 38, 2-4) prescribes that if a husbandman who is not a slave but is hired for work) gives up the work or a cowherd acts similarly he should be punished with flogging and the animals handed over to the cowherd should be taken back from him. This may have been the ancient law, but it was modified in later ages. Kaut. (III. 13) states that if the employer does not pay the wages he should be fined six paṇas or a tenth part of the proper wages or the wages agreed upon and if the hired person denies the receipt of wages (though he really received them) he should be fined twelve paṇas or a fifth part of the wages.<sup>833</sup> Kaut. (III. 14) further provides that in the contract of service it may be provided that the master is not to employ

831. दृढितेनैवः कर्म न करोति यदा मृतः । समर्थयेद् दर्मं दाप्यो विमुक्तं तत्र वेतनम् ॥ बृह. ५. by स्मृतिसं. II. p. 302, नि. २. p. 159; कर्मरम्भे तु नः कृत्वा निर्दोषं नैव तु कारयेत् । यदाकारयित्वा सोऽसावकुर्वन् दण्डमर्हति ॥ कात्या. 657 ५. by स्मृतिसं. II. p. 203, नि. २. p. 110; दृढित्वा वेतनं कर्माकुर्वतो भुक्तकस्व द्वादशपणो दण्डः । संरोधवा-कारणात् । अर्थशास्त्र III. 14.

832. मनिभूय न कुर्वीतः स कार्येऽप्याह यदादि । स चेन्न कुर्वीताकर्मं प्राप्नुयाद् विमर्शं दमम् ॥ इजमत् ५. by स्मृतिसं. II. p. 203, वरा. भा. III. p. 325, अ. २. p. 325.

833. वेतनादाने दण्डवन्तो दण्डः यदपणो वा । अदण्डवदमनि द्वादशपणो दण्डः यद्वचन्यो वा । अर्थशास्त्र III. 13.

another servant or that the servant is not to work for another master during the period fixed.

Yaj. II. 197, Nār. IX. 9, Kat. 659, Viṣṇu Dh. S. 834 V. 155-156 provide that if through the fault of a carrier (and not through act of God or the king) goods entrusted to him for carrying are lost or become deteriorated, he should be made to pay for the loss. Vṛddha-Manu specifies that if the goods are lost through the negligence of the servant he has to pay only the price, but if through spite then he should be made to pay double the price. If a hired servant (such as a palanquin-bearer or an armed guard) causes obstruction (by refusing to work) at the time of starting for an auspicious matter (such as a marriage), he should be made to pay double the amount of the wages agreed upon and another servant may be engaged (Yaj. II. 197, Nār. IX. 8, Kat. 658, Vṛddha-Manu in V. R. p. 163). Yaj. II. 198, Nār. IX. 7 provide that if a servant abandons his work (as a bearer or guard) after a start is made (when not seized by illness) he should be made to pay  $\frac{1}{4}$ ,  $\frac{1}{2}$  or the whole of the wages according to the distance traversed and a master abandoning a servant in similar circumstances should be made to pay similarly.

If a servant agrees to take a lump sum for some work to be done for a certain period and leaves the work before the period elapses he would lose all the wages, but if he leaves in the middle of the period through the fault of the employer (such as scolding without any fault of the servant) he would be entitled to receive a proportionate part of the wages (Nār. q. by V. R. p. 161).<sup>835</sup> Viṣṇu Dh. S. V. 153-154 and 157-158 provide that in the same circumstances the servant would have to pay a fine

834. बाण्डं व्यसनमाप्येद्यदि वाहकदोषतः । स दाप्यो वाण्डश्च स्वदाहिराजकुलान्ते ।  
नारद IX. 9; न तु दाप्यो हर्तुं चौरिदोषमूर्धं जलेन वा । कात्या. 659, q. by स्मृतिच. II. p. 203, अपराकं p. 799, स. वि. p. 300. वनवाक्याशितं दाप्यः समं द्विद्वौहनाशितम् ।  
बृहस्पत q. by स्मृतिच. II. p. 203, वि. र. p. 162; वदोषेण यद्विगदयेत् तत्त्वामिने ।  
अन्यथ द्वौपपातात् । विष्णुधर्मसूत्र V. 155-56; निजपन्थाहको दाप्यः यशाने द्विमुनं द्रुमम् ।  
कात्या. 658 q. by स्मृतिच. II. p. 203, परा. मा. III. p. 327. The provisions for breach of contracts of personal service during a journey and the like set out here are very mild as compared with the severe punishment provided for it under section 490 of the Indian Penal Code (repealed in 1925).

835. काटेऽप्यर्थं स्वजन्तुं कर्तुं धृतिर्नासमाप्नुयात् । स्वनिर्दोषद्विपकामन्तं पाण्डुतन्माप्नु-  
यात् ॥ नारद q. in वि. र. p. 161, व. य. p. 326; स्वजेत्यपि सहाये चः आगन्तं योगार्ज-  
नेन वा । पाण्डुपारमार्हसं पूर्वं धृतिं व्यथमपादयन् ॥ कात्या. 660 q. by वि. र. p. 665,  
अपराकं p. 800.



of 100 panas and that if the employer abandons the servant before the period fixed has expired he would have to pay the whole of the wages to the servant and a fine of one hundred panas (except in the case of act of God and the king). Kāt. (660) provides that a master deserting on a journey his servant that is tired or falls ill should be fined the first amercement if he does not wait for three days in the village. If a trader after engaging a vehicle or draught animals for carrying his merchandise for hire, does not employ them to carry his goods he should be made to pay a fourth of the hire settled and the whole of it if he discharges them when only a part of the journey has been made (Nār. IX. 7). If the merchandise be attached<sup>836</sup> (by the king's officers for toll &c.) or be stolen the servant engaged to carry the goods will receive a proportionate amount (out of the lump sum agreed to be paid for a certain journey) according to the distance travelled (Kāt. 661). If the employer does not pay the wages of a servant even though the latter has done his work the king should make him pay the wages and also a proper fine (Br. In S. R. E. vol. 33 p. 346 verse 18). If a man<sup>837</sup> having hired elephants, horses, bulls, asses or camels does not return them even though the work (for which he hired them) is finished he should be made to restore them together with the hire (up to the day of return). The same rule applies to a man taking on rent a house or water (reservoir) or a market and not giving it up at the time fixed (Kāt. 662-663). Nār. (IX. 20-21) provides that if a person builds a house on another's land by paying rent (*stoma*) for the land, he may take away when vacating the land the bricks, the timber and grass (thatch) of the house built by him, but if a man builds a house on another's land without paying rent and against the owner's wish then he has to leave

836. यदा च पण्डितः सदाशिवः क्लृप्तः वा । यावान्नाम नालेन वायुवासान्ति  
धृतिः ॥ कारणा. 661 q. by स्मृतिच. II. 204; नि. र. p. 164; क्लृप्ते कर्मणि वाः स्वामी न  
वृषोद्धतने क्लृप्ते । राजा दापयित्वा रसादिगन्धं चानुवृत्तः ॥ बृह. in स्मृतिच. II. p. 204,  
नि. र. p. 165.

837. इत्यप्यगोचरोद्भास्यं सुदीपा भाटकेन वाः । नार्थेन कृतकृत्यार्थः स तु दाप्यः  
सभाटकम् । पृथगर्थपयादीनि सुदीपा भाटकेन वाः स्वर्गमि नार्थेन कृतकृत्यार्थः सभाटकम् ॥  
कारणा. 662-663 q. by स्मृतिच. II. p. 205, नि. र. pp. 165-169, परा. मा. III.  
pp. 330-331. The word भाटक (which corresponds to the word भाट in Mara-  
thi and other vernaculars) appears to be a *prākṛit* equivalent of the old  
Sanskrit word भूति treated again as a Sanskrit word. In Sanskrit वेतन or  
धृति is used for wages, while भाटक or स्तोम means rent of a house or land  
or the like.

the materials of his house to the owner of the land when he has to give up the land. An important rule is stated by H. (S. B. E. vol. 33 p. 346 verse 17) that when a servant<sup>838</sup> employed by an employer does some improper act (such as a theft) to another for the benefit of his master, the latter would be held responsible for the loss. The Matsyapurāṇa says that if a teacher having agreed to teach a lore or craft for money which he receives fails to do so, he should be fined the whole of the amount<sup>839</sup> of the fee.

From the above it will be clear that contracts of service and letting on hire are lumped together under one head by the smṛtis.

Kant. III. 14 provides that persons may be paid wages by a guild or corporation of workers of which they are members. The earnings of such guilds may be divided equally among all workers or as agreed upon among themselves. Yāj. II. 265 also refers to the fact that rules similar to those of partnerships may apply to guilds of husbandmen and artisans.

Certain rules are laid down in Nar. IX. 18, Yāj. II. 292 and Matsyapurāṇa 227. 144-146 about the monetary liabilities of prostitutes and persons visiting them. Vide H. of Dh. vol. II. pp. 638-39 above. The Matsyapurāṇa (227. 144-146) states that a brāhmaṇa who visits a prostitute should be fined as many paṇas as he paid to her, that if a prostitute after receiving her fee does not receive the visitor and goes elsewhere she should be made to pay to the visitor double of the fee and a similar sum as fine to the king, and that if one, after telling a prostitute that she is to visit a certain person, takes her to a different person, he should be fined one gold māṣaka.

The Matsyapurāṇa (227. 147) further states that a visitor who has had sexual intercourse with a prostitute and yet has not paid her fee should be made to pay double the (agreed) fee to her and a similar sum as fine to the king. Nārada provides that the chief prostitutes and the voluptuaries that stay with them

838. तस्यैव निविष्टकाः सव्यं स्वार्थं विदुषाणि वदः । तदर्थं मधुमे कर्म स्वामी तज्जा-  
परास्तुष्यत् । इति. ५. by स्मृतिच. II. p. 304 ; वि. १. p. 163. Compare section 238  
of the Indian Contract Act as to the principal's liability for his agent's mis-  
representation or fraud.

839. सूत्रमादाय को विद्यां शिक्षं वा न प्रच्छति । दण्डः स दूतं सकलं धर्मज्ञेन  
महीशूत्रा ॥ मत्स्यपुराण 227. 6 ५. by वि. १. p. 163.



should help in deciding monetary disputes in which prostitutes are concerned<sup>840</sup> (q. in Sm. C. II. p. 206 and others). Nār. (IX. 18-19) prescribes the payment of eight times the fee and a similar fine in the case contemplated in Mataya 227. 147.

*Aśhyapetyākārūṣā* (non-remission of service after making a contract to serve or obey)<sup>841</sup>. Nār. VIII. 1 defines it as the title in which after having undertaken to serve or obey one does not act up to it. The ancient dharmasūtras mention only two kinds of servants viz. agricultural labourers and herdsmen. Vide Ap. Dh. S. II. 11. 28. 2-3 and Gaut. XII. 16-17<sup>842</sup>. Acc. to Nār. VIII. 2 and 3 there are five kinds of servers (or attendants) viz. four that are called *karmakaras* (performers of labour) and the fifth class comprehends slaves of fifteen kinds; and the four *karmakaras* are pupil (*śiṣya*), apprentice (*anvīṣin*), a hired servant (*bhṛtaka*) and one who supervises hired servants (*adhikarmakṛt*). Not being free to do as they like is the common attribute of these five kinds of attendants, but there is a distinction among them due to their castes, their peculiar actions and their mode of maintaining themselves (Nār. VIII. 4). A *śiṣya* (pupil) is one who desires (from his teacher) instruction in Vedic learning, an *anvīṣin* is one who receives instruction in some craft such as goldsmith's work or dancing, a hired servant is one that does some work for wages, an *adhikarmakṛt* is one who supervises hired servants. Work is of two kinds, *śubha* (i. e. pure, done by the four kinds of *karmakaras*) and *aśubha* i. e. impure (done only by slaves). *Aśubha* acts comprise<sup>843</sup> (Nār. VIII. 6-7 and Kāt. 720) sweeping the doors of houses, pits in which leavings of food are thrown, roads, rubbish heaps; scratching or shampooing the private parts (of the masters); collecting and throwing away leavings of food, ordure and urine and making use of one's limbs (hand &c.) at the master's desire for wiping off the master's private parts; all other actions are pure. *Karmakaras* do work for securing Vedic learning or *vyākāra* (art or craft), some desire for money. The

840. वेदवाः पशवाः वास्तव आशुवासद्वर्षीणिताः । तस्मिन्नेषु कार्येषु निर्णयं संशये विदुः ॥ नारद उ. by द्रुपदिन II. p. 206, वि. र. p. 167, व्य. च. p. 330.

841. आश्रयकारणे शुश्रूषा ताम्रवर्णिकान् पश्याद्ये न सत्यादिति तद्विवादादुपद्रवमुपायाः शुश्रूषाकर्मम् । मिताः ७७ वा II. 182.

842. अश्वजिनः कीनाश्रयः कर्मण्यामे द्रुपदाशनम् । तथा द्रुपदस्य । आश. M. II. 11. 28. 2-3.

843. विष्णुयोगानन्दं चैव नम्रवचस्मिन्दनम् । यथो द्वासीसुतः कुर्तुमेषादिग्रहणे च यत् । नारदा. 720 q. by वि. र. p. 144.

duties of a vedic student are described by Nār. VIII. 8-15 and have been set out above in H. of Dh. vol. II. pp. 305-312 viz. to wait upon the teacher, his wife and son, to beg for food, to sleep on the ground, to do the bidding of the teacher, to learn the vedas, to offer fee to the teacher at the end of vedic study. An apprentice is distinguished in his actions and mode of maintenance from a śleṣya. The antevāsin, acc. to Yāj. II. 184, Nār. VIII. 16-21, Br. (S. B. E. vol. 33 p. 344 verse 6) and Kat. 713, resides with a master craftsman to learn some<sup>844</sup> art or craft (such as goldsmith's work, singing, dancing, house-building), agreeing to work under him for a stated period; the master craftsman gives him food and teaches him in his own house, does not put him to any other work; if the apprentice leaves the teacher even though the latter is willing to teach him, he (the pupil) should be made to stay with the teacher and may be whipped or confined; the pupil even though he may have become an adept has to stay with the master till the end of the agreed period and the teacher appropriates the fruits of the apprentice's labour. If the master does not instruct the apprentice in the craft and makes him do other work, he would be liable to pay the first amercement and the pupil may leave him<sup>845</sup>.

Hired servants have different grades among them arising from the work they do, the wages they receive and the period for which they are employed and they are distinguished from apprentices in these respects and not as regards caste or mode of maintenance. According to Nār. VIII. 22-23 and Br. (S. B. E. vol. 33, p. 344 verse 8) a hired servant is of three kinds and his wages depend on the work he does and his ability to do it. The three kinds are the highest (viz. a soldier), middling (an agriculturist), the lowest<sup>846</sup> (a porter). A hired servant may

844. अनेकाया तेषां विदितं जालिकर्मास्तुल्यतः । विद्याविज्ञानकामार्थेनितरेण चतुर्विधाः ।  
एकैकः दुनरेतेषां विद्यामनुष्ठानपथेन ॥ विद्या चतुर्धा समाख्यातः क्षत्रधनुसानुष्ठानाः । तद्वै  
सृष्ट्याश्चतुर्धा यदुर्वाच्यमनुष्ठेयिष्यात् ॥ विज्ञानमनुष्ठाने धितव्यं हेमकुण्डलिनेस्तुतिः । सृष्ट्या-  
दिकं च तन्विद्यया कुर्वन्तु जने सुखीयेत ॥ बृह. ५. ५. by वि. र. pp. 140-1. स्तुतिच. II.  
p. 195; यज. ५. p. 314, स्पष्टाकारसार p. 353 (the last three contain only the last  
two verses).

845. यस्तु न साधयेन्नित्यं कर्मण्यन्यानि कारयेत् । यच्चपासादहं हृदं तन्मास्त्रिष्वधो  
निर्वाते ॥ कात्या. ५. by अपराधकं p. 790, परा. मा. III. 338, वि. र. p. 141.

846. यदुर्वाच्यं धृताः परिकरभा भगवतोऽपरः । हस्तिमण्योत्तमार्थं च सर्वेषामेव चोत्तमम् ॥  
द्विजनामार्थं यथासंवितासाधुभूततया । कर्म कुर्वाणविज्ञानं तन्मते शान्तिनामिदम् ॥ बृह. ५. ५.  
स्तुतिच. II. p. 196, परा. मा. III. p. 339-40.



be engaged for a day, a fortnight, a month or for longer periods, should perform the work undertaken and get the wages agreed upon. He may be paid in cash or by giving him a share of crops or a share in the milk of the cattle he tends<sup>847</sup>.

A person who is employed and given authority over all servants and also one who looks to the affairs (expenditure &c.) of the household is called 'adhikarmakṛta (or-kṛt), acc. to Nār. VIII. 24. All these four are called workers in clean occupations, while the fifteen kinds of slaves are employed in the lowest and dirtiest work (Nār. VIII. 25). The difference between the hired servants and slaves is this that the latter surrender all their freedom and themselves entirely to another, while the former, though dependent to some extent, do retain some freedom (Kat. 715), but a *hāmānaya* was not to be a slave<sup>848</sup>. In very ancient times the master's liability for the acts of his servant does not seem to have been recognized. For example, Gaut. XII. 17 states that if cattle entrusted to a herdsman cause loss to crops, then the herdsman is to be held responsible (and not the owner who employs the herdsman). But Manu VIII. 243, Yāj. II. 161, Nār. XIV. 29 appear to hold the master liable to make good the loss caused by the herdsman's default. Vide Bṛ. quoted above under *retanavyā-nipātakarma*.

The kinds of slaves and the incidents of slavery have been already dealt with in H. of Dh. vol. II. pp. 180-189. A few matters not referred to there may be dealt with here. 'Buddhist India' p. 55 (by Rhys Davids) shows how slavery in the Buddhist period was not as miserable as under the Greeks. The *Rajataranginī* IV. 39 states that king Vajraditya of Kashmir (in the 8th Century A. D.) sold many men as slaves to Mlecchas. One cannot help blaming the British Indian Government for the Assam Labour and Emigration Act (VI of 1901) whereby a modified form of serfdom or slavery was legalised for the benefit of the tea planters of Assam, Bengal and other provinces and by sections 168-169 of which poor indentured labourers who were induced to labour on the sumptuous monthly wages of five rupees were liable to be sentenced to fine or in

847. द्विचकारो भालचक्रः कुविमोर्जीविनः स्मृतः । जलसरपातथा श्रीरास लभेत न संशयः ॥ वृह. q. by स्मृतिच. II. p. 196, च. ३, p. 116, हि. १, p. 143.

848. स्वतन्त्रस्यात्मनो दातादारमाल दारनरुपयः । विप्रु वर्जेषु विज्ञेय दारस्य विवरण न कथितम् । कात्या. 715 q. by अपभ्रंश p. 788, स्मृतिच. II. p. 197.

default to imprisonment, if they left off the work to which by agreement they were tied down in unhealthy districts and unhealthier surroundings.

Kāt. ( 725 ) provides that<sup>849</sup> if a woman who is not a slave marries a slave she becomes a slave since her husband is her lord and is dependent on his master. If a person buys or sells a brāhmana woman<sup>850</sup> as a slave the king should annul that transaction and all persons ( concerned in it ) should be fined by him and the same holds good in the case of a woman of a respectable family who took shelter with a person and was made a slave by him or transferred by him to another as a slave ( Kāt. 726-727 ). The punishment of first amercement is prescribed for a person who has sexual intercourse with the nurse of his child or with another woman who is not a slave and the wife of his attendant as if she were a slave; and a fine of two hundred paṇas is provided in case a master who is not in difficulties and is well-off desires to sell a female slave who is faithful and weeps bitterly ( being unwilling to leave him ). Nar. VIII. 40 provides that if a slave leaves his master and goes over to another saying ' I am your slave ' that would not help the slave, as his former owner would be entitled to claim him back. Uśanas states<sup>851</sup> that a *guru* ( elderly person ), a *sapinda*, a brāhmana and persons of the lowest castes ( cāṇḍālas &c. ) cannot be made slaves, nor can any one ( of the higher castes ) who is superior in learning be the slave of one of the same caste.

849. इत्येतेषां लक्ष्मीयाः सापि दास्यन्ति माधुपयान् । वस्त्राङ्गतां वधुस्तरवाः स्वाम्यधीनः पशुपतः ॥ कात्या. १. by स्मृतिच. II. 201, स्व. व. p. 322, म. वि. p. 294.

850. अपवृथाद् ब्राह्मणीं वस्तु विक्रीणीत तथैव च । राजा तद्वक्तुं कार्यं दण्ड्याः स्युः सर्व एव ते ॥ कामाक्षी संभारो वस्तु दासीं कुर्यात्कुलशिवम् । संज्ञामयेत वाच्यं दण्ड्यस्तरवा-कुलं भवेत् ॥ बालधारीमदासीं च दासीमिव मुनक्ति यः । परिचारकपत्नी वा माधुपयानपूर्वसाह-सम् ॥ विक्रीदामानां प्रो भक्तो दासीं विक्रेतुमिच्छति । अतएवदिवः शक्तः सय माधुपयानं द्विजानां दमम् ॥ कात्या. १. by अमरार्क p. 789, वि. र. pp. 154-155, स्व. व. p. 321.

851. न वचनं सपिण्डश्च न विप्रो नाप्ययोनयः । दास्यन्तर्हन्ति न च विद्या-भित्तो द्विजः ॥ उशानस् १. by म. वि. p. 396, which explains ' ब्राह्मणश्च अन्ययोनिर्न दासः विद्याभित्तश्च । एवं सपिण्डोऽर्वाङ्गतः । सत्यर्थे तु विद्याभित्तो न दासः । '



## CHAPTER XXI

### SAMVID-VYATIKRAMA AND OTHER TITLES

( Violation of compacts or conventions )

Nār. ( XIII. 1 ) employs the expression *samayajñāpākarma*. Manu VIII. 5 employs the first expression. Manu ( VIII. 218-219 ) has both names in view, when he says ' I shall now declare the rules applicable to those who violate *samayas* ( conventions ). He who having entered into a compact ( *samvid* ) under ( the sanction of ) an oath with the inhabitants of a village or a district or with a group of traders or other persons breaks it through greed should be banished from the kingdom by the king.' In Āp. Dh. 8. 1. 1. 1. 2 and II. 4, 8. 13 the word ' samaya ' <sup>552</sup> is employed in the sense of ' convention or accepted doctrine '. The same word is also used in the sense of ' agreement ' as in Yāj. I. 61 ( *gāndharyah samayānūthah* ). In this title it means ' the acceptance of a certain rule or convention arrived at by many ', as explained by <sup>553</sup> Medhātithi on Manu VIII. 219. It signifies a local or caste usage or convention made by groups of people ( such as guilds and corporations ) binding on all members that form or join the several groups. The Amarakosa holds that *deśa* and *utthara* are among the several meanings of *samaya*. Medhātithi explains that, if the inhabitants of a village come to a decision that they would oppose the inhabitants of a neighbouring village who were indulging in grazing their cattle in the pastures of the former village or diverting the watercourses and that if in doing so there was a riot or a suit were filed before the king, all should

552. समयसमयः समर्थः वेदाश्च । आप. ध. सू. 1. 1. 1. 2. । अङ्गानां तु पथानैरप्यदेश इति न्यायविश्वकोशः । आप. ध. सू. II. 4. 8. 13.

553. समयसिद्धिः ( समयः सिद्धः ) । सङ्घेय इदं सवा भक्त्यायुक्त्ये निश्चितं कार्यप्रति-  
' बन्धुव्ययम् । मेधा, on मनु 8. 219; समयः शपथसाधारणसिद्धान्तसंविद् । अमरकोश.  
Medh. on Manu VIII. 230 takes the word ' saṅgha ' by itself and Bühler ( S. B. E. vol. 25 p. 293 ) is misled ( probably by some corrupt ms ) into translating as ' belonging to a corporation inhabiting a village or a district '.  
मेधा. says: ' एषं वामसमुदायो देशसंघः ( देशः सङ्घः ) एकपक्षोत्पन्नतानां नागदेशवासिनां  
नागजातीयानामपि जातिनां समूहो यथा सिद्धो सङ्घो यतिनां सङ्घश्चातुर्वर्ण्य-  
सङ्घश्च इति । '

be of one mind, that any one of those who encouraged this decision would be liable to be punished if he backed out of it through some inducement offered by the headman of the other village. Nār. XIII. 1 explains that *śamaga* means the rules (or conventions) settled among heretics; *naigamas*<sup>854</sup> and the like. Yaj. II. 192 and Nār. XIII. 2 provide that the conventions of guilds, *śamogas*, heretics, *śreṇis*, *pūgas*, *ganās* and in towns and districts should be enforced by the king and their traditional mode of conducting their business should be protected. Some remarks have already been made on guilds and corporations above (pp. 156-57 notes 196-198). Vide also H. of Dh. vol. II. pp. 66-69 for the guilds and corporations and the meanings of words like *śreṇi*, *pūga*, *gaṇa* etc. Some further information is added here. The Sm. C. (II p. 223) has a very<sup>855</sup> interesting note illustrating the various conventions of several groups and its remarks are copied *verbatim* by the V. P. pp. 332-333. It says: 'Even heretics have certain rules made for the benefit of their monasteries. Among *naigamas* there is a practice that those who disregard messages brought by servants wearing a specific jacket (as a uniform) should be fined. *Śreṇis* are guilds of craftsmen such as weavers. They have rules that certain articles are to be sold only by a certain guild and by no other. *Pūgas* are groups of elephant riders and horse riders.' *Vrāta* is defined by Kāt. as a body of persons armed with various weapons, while the *Mahābhāṣya* on Pāṇini V. 2. 21 (*vrāteṣu jīṣṭhi*) explains it as a 'group of men of several castes and several occupations who make a living by relying on their formidable bodies'. Acc. to the MIt. heretics are those like the Bauddhas who do not regard the Veda as authoritative. *Gaṇa* means, acc.

854. *Śamaga* is defined by बह्विज्जम्मत as follows: पौरुषवत्तया वेदं समागच्छ (वेद-प्राप्त्यर्थं) प्रवृत्तिर्ये । तेषां वैशेषिकादीनां नियमावली प्रकीर्तये ॥ ५. by बह्व. वि. p. 13. But this sense is not appropriate here. The same work (p. 14) quotes कालाचन's definition which is more appropriate 'नामापीरसमाजसु नियमावली प्रकीर्तये ॥'

855. पुनश्चाते चान्यथापुनस्तस्य समरे य सन्तत्तामिवाद्युषः सन्ति समयः । यत्ने तु यत्नमेद्वि यत्नमे वाय्वे कर्णवेधः कर्तव्य इत्येवमादिरिति समयः । यथादिश्वयादिश्वमेन ब्रह्मयुजिभवाजनः परिसृष्टिः । तत्र ब्रह्मदक्षिणावर्धमानतो नासनीय इत्यदिभिसमवेति । पुनर् तु धारणादिकं पूर्तीत्या अन्वयः पारयतो न तद्विज्ञपनिरपत्ति समयः । जनपदे तु कश्चिद्विज्जुमन्ने वृक्षवन्ध-प्रवर्ण कार्यं कश्चित्कृतुमन्ने इत्यादिकोत्पन्नमेकविधः समयः । जनपदे यथेयवत् तथासम्प्रदाय-कालान्वायपुराणीनां प्रवृत्तिर्मात्राः । तत्र न बोधचाररवामे स्वातन्त्र्यमिवादिर्कोरित यामे समयः । जमीरखीपुरुषवन्मित्रारे न वृत्त इत्यादिकोरित योदे समयः । रसुतिच II. p. 223 ०० नारद XIII. 2 'याथविज्ञमन्मेकीपुनश्चातयतादिवु । संरक्षेत् समर्थ राजा पुनर् जनपदे तथा ॥'.



to Mit. 'an assemblage of armed persons subsisting by following one occupation', while Kāt. (680) says it is a corporation of brāhmanas. In the Rājat. II. 132 reference is made to corporations of purohitas at temples and tirthas (sacred places). The Sm. C. states that among pūgas and vrātas there is a convention that they must go to battle all together and not separately. Among gāpas there is a usage that the lobes of the ear (of a child) are to be pierced on the 5th day or in the fifth year from birth. Among mahājñas in a settlement of brāhmapas there is a convention that a brāhmana repaying to them for collecting fees to be paid to his teacher (at the close of Vedic study) should be honoured (i. e. should be paid some contribution). In certain districts there is a usage that either the seller or the buyer should keep in his hand  $\frac{1}{8}$  of the price (probably for finding out whether the article is useful for the purpose in hand and resiling from the bargain if it is not). In forts or capitals there is a rule that corn taken out of it by a person with him when going out elsewhere should not be sold by him. In villages there is a rule that in pastures no digging would be allowed. In the hamlets inhabited by abhiras there is a convention that for adultery by a male or female there is to be no fine. It does credit to the ancient writers on dharmasāstra that they were tolerant enough to require the king, whatever his own religious persuasion might be, to honour and enforce the usages of even heretics among themselves. The only requirement was that the enforcement of their usages must not be opposed to the interest of the country or the capital and must not cause commotion and must not be plainly immoral<sup>856</sup> (Nār. XIII. 4-5 and 7 and Medhatithi on Manu VIII. 220). Yāj. (II. 188-192) lays down the following rules: there should be a committee (of two, three or five, acc. to Br.)<sup>857</sup> to look after the business of the guilds &c. (called *kūryacintaka*) who should be religious, pure, not covetous and all members should carry out what they decide upon; when the committee members approach the king on some business of their guild he should bestow on them gifts and

856. शेषवत्करणं वत्प्रादुर्भावाप्यकल्पितम् । यदुत्तमपि तद्व्याजा अथवाकामो निवर्तयेत् ॥ नारदः (सम्यक्शासनपात्रम् ?) on which the *vy. s.* p. 337 has the following instructive note: राज्ञोभाविदोषवत्करणं क्षुद्रिस्त्वृत्तिवद् विषयादीं वैशवाणादिकं पादव्याविभिः प्रकल्पितं तद्वदुक्तान्यदुत्तमपि राज्ञा निवर्तनीयमित्यर्थः ।

857. द्वौ त्रयः पञ्च वा कार्याः समूहकृतमादिनः । कर्तव्यं च यन् तेषां वातवेगवशात् विभिः ॥ बृह. q. in *vy. s.* II. p. 224, *vy. s.* p. 334. For the qualities of the committee members (similar to Yāj. II. 191) vide Br. (S. D. E. vol. 33 p. 347 verse 2) q. by *vy. s.* p. 334.

honour them. Whatever is obtained by any one sent on the business of the group must be handed over by him to the heads of the group (also Br. in S. B. E. vol. 33 p. 349 verse 22)<sup>558</sup> and if he does not do so he should be fined eleven times as much. Whoever goes against the heads of the group that are working for its benefit should be punished in the first amercement (by the group itself, acc. to Sm. C. II. p. 224). Kāt. (677) states the general rule that whatever is obtained (by the committee or advisers of the group) or is saved by them or whatever debts are incurred by them for their group and whatever they obtain through the king's favour should be shared equally by all (members of the group). Kāt. (674-675) provides that whatever debt was professedly incurred by the committee for the group but was misappropriated by them or applied to their individual purposes must be paid by them and that those who subsequently join the groups already formed become equally entitled to the property and liable for the debts previously acquired or incurred. Manu VIII. 220 and Br. (S. B. E. vol. 33 p. 348 v. 14) provide a fine of six *niskas* of four *suvarṇas* each (or six *niskas* and four *suvarṇas*) for him who falls out with his associates. Kāt. (671) provides that that member (of a group) who opposes what is reasonable, who gives no scope to (i.e. obstructs or persistently interrupts) a speaker (in a meeting of the group) or who speaks absurdly should be made to pay the first amercement. Yaj. II. 187 prescribes forfeiture of all property and banishment for him who misappropriates the property of the group or corporation or who violates the conventions made by the group (or the king). As stated by the Mīt. this and other sentences depended upon the nature and gravity of the offence and the capacity of the offender<sup>559</sup>.

*Kṛayāṅkṛayānuṣṭaya* (repentance after purchase or sale). Manu VIII. 222 and Kaut. III. 15 regard this as one title of law. But Nār. (XI and XII) splits this into two titles viz. *akṛiyāsampradāna* (non-delivery of a thing after it is sold for a price) and *kṛitānuṣṭaya* (repentance after buying). Manu states the general rule that whenever a person after buying

558. दणैः याते रक्षितं वा वणार्थं वा कर्त्तुं कुतश्च । राजपसादित्थं च सर्वेषामेव तत्समम् ॥  
मणस्यदिश्य यत्किञ्चिदुत्पन्नं भक्षितं भवेत् । आत्मार्थं निमित्तकं वा देवं तैरेव तद्वदेत् ॥ वणानां  
अभिज्ञानां मताः स्तुर्वै तु मरुतान् । नाकतरुध वनजस्य जनीयाः सर्वे एव ते ॥ कात्या. ५. ७७  
स. नि. p. 330-331. वि. र. p. 187, स्तुतिच. II. p. 227, वृ. र. p. 338

559. मनुस्मृतिपादिमद्वह्मणां निर्दोशनचतुःशुद्धनिष्कलमगानामन्यतमे अतिशयवाद्य-  
पेक्षया कल्पनीयः । मिता. ०० पा. II. 187.



or selling anything repents of having done so, he may return or take back that thing within ten days. Nār. XI. 2 states that property is of two kinds in this world viz. movable and immovable and that all property is designated as *prapa* (saleable) in rules about purchase and sale. According to Yāj. II. 254, Nār. XI. 4-5, Viṣṇu Dh. S. V. 127<sup>860</sup>, if a man sells property and does not deliver it to the purchaser, he should be made to deliver it to the purchaser together with profits (between the time of sale and delivery) and if it is movable together with the price of profits arising<sup>861</sup> from it (such as milk in the case of a cow). Viṣṇu Dh. S. V. 128 prescribes a fine of 100 paṇas against the vendor. Kaut. III. 15 prescribes a fine of 12 paṇas against the vendor who after selling a thing does not deliver it and also against a buyer who having purchased does not take delivery of it, except when the thing itself is defective or is lost by act of king or theft or by fire or flood or unless the transaction was for inadequate price or brought about in distress<sup>862</sup>. If the article sold is not delivered by the vendor after demand by the vendee and it is injured, destroyed by fire or stolen, the loss will fall on the vendor (Nār. XI. 6, Viṣṇu Dh. S. V. 129, Yāj. II. 256). These rules apply when the vendor does not feel repentance for having sold the thing, but if he feels repentance then Manu VIII. 222 will apply and the vendor may pay back the price and recover the article within ten days<sup>863</sup> from the sale. Kat. (684) provides the same rule. No one, either buyer or vendor, can rescind the sale after ten days and if any one uses force in

860. विक्रीय तर्पे मूलमेव क्लृप्तो न प्रयच्छति । स्वाधरमोदुमे दाप्यो जडुमन्त्र किवा-  
कम् ॥ नारद XI. 4. The *mita*, on Yāj. II. 254, निवादचन्द्र (p. 50), *vy. n.* p. 342  
and others read स्वाधरम इवे and explain 'विक्रयानन्तरं जात उपमेयः स्वः' (*vy.*  
*n.*) and 'किंवा साधमादिका कले दुग्धादि । समहारोदय' (निवादचन्द्र p. 50).

861. 'Udya' in Nār. and Yāj. may mean either the profits from the property that the vendor enjoyed or the difference in price between the date of sale and the date of delivery if the property became less in value. This applies when both parties are inhabitants of the same place; but if the purchaser is one who comes from another country then he may be awarded the profit that he would have made in the other country by selling it if it had been delivered to him at once.

862. कीमतीमते वा हानिः सा केतुरेव स्यात् । विश्वधर्मसूत्र V. 129. विक्रीय  
वण्यमावच्छेदो दादकृणो दुग्दोऽन्वय दाधोपनिवारणिवद्योगः ... जीवा वण्यमनिसृष्टयो  
दादकृणो दुग्दोऽन्वय दोषो ... शीघ्रः । कीमिन् III. 15.

863. एवं पणो दशमासु परतोऽनुप्राप्तो न तु । कात्या. 684 n. by स्वतिस्र. II. p. 218,  
वि. १. p. 192, पण मा. III. p. 367.

recovering the article sold or bought after that period the king should fine him 600 panas. *Manu* VIII. 228 extends these rules about repentance and recovery within ten days to all transactions whatever. *Kāt.* (685) prescribes that the period of ten days for repentance is allowed to vendors and vendees only in the case of land, and that the period is 12 days when the parties to sale of land are sapīḍas of one another and that in other cases the period is even shorter.<sup>864</sup> *Yāj.* II. 257, *Nār.* XI. 7-8, *Br.* (S. B. E. vol. 33 p. 350 verse 4) provide that when a vendor having sold a thing to one man for a price received sells it to another or having concealed the defects of an article sells it as free from defects he should be made to return double the price to the purchaser and a fine equal to double the price to the king.<sup>865</sup> The above rules apply where the purchaser has paid the price, but if there is a mere agreement and no price is paid, then the vendor or vendee is guilty of no wrong if he resiles from the bare agreement to sell or buy unless they have made an express stipulation that the agreement cannot be rescinded (*Nār.* XI. 10). When at the time of the agreement for sale, the vendee pays something by way of earnest, then if the sale goes off through the fault of the vendor, the latter has to return to the vendee double of the earnest;<sup>866</sup> but if the purchaser does not finally take it he loses the thing and also the earnest. *Nār.* XII. 1 prescribes that when a vendee after having purchased a thing for a price repents of the purchase that is the title of law called 'rescission of purchase.' *Nār.* XII. 2 prescribes that if the purchaser thinks that he has made a bad bargain he may return the thing purchased to the vendor on the same day in an undamaged condition (and may receive back the price paid); but if he returns it on the 2nd or 3rd day after the purchase (including the day of purchase) he will have to lose respectively one-thirtieth or one-fifteenth of the price and after the third day he cannot return the thing at all (*Nār.* XII. 3). But *Yāj.* II. 177 and *Nār.* XII. 5-6 lay down

864. पुनर्देयार्थं विक्रेतुरापरत्वेकतुरेव च । द्वादशाहः सपिण्डानामपि चावधत्ताः परम् ॥  
जायता. (685) q. by परा. मा. III. p. 364.

865. ज्ञात्वा सदोषं वस्तुव्यं विक्रीणीति विचक्षणः । गृह्ये द्विगुणं वाप्यस्तस्मै विजये  
नया ॥ बृह. q. by स्तुतिच. II. p. 320. परा. मा. III. p. 370.

866. सत्यङ्गारकृतं द्वयं द्विगुणं प्रतिदाययेत् । वाङ्. II. 61; vide the *sūtra* thereon.  
सत्यङ्गारं च यो दूषा वशाकाले न हरयेत् । पश्ये भवेत्तद्वदं मदीयमानमसृष्टतः ॥ व्यास q. by  
स्तुतिच. II. p. 320. परा. मा. III. p. 370. क्रीते सत्यङ्गरे सत्यङ्गारः सत्यङ्गतिः क्षिणम् ।  
अमरकोश, on which श्रीवत्सामी says 'अत्रायं सत्यङ्गं विक्रीयमिति सत्यङ्गं करणे  
सत्यङ्गम्' and for सत्यङ्गार relies on पतञ्जलि VI. 3. 70 'कारे सत्यङ्गद्वयम्'.



the following periods for examination of things purchased, viz. one, three, five, seven, ten days, half a month and one month respectively in the case of iron (and clothes), milch cattle, beasts of burden, jewels (precious stones, pearls and corals), all sorts of grain, a male slave and a female slave. It must be supposed that these verses contain exceptions to the general rule in Manu VIII. 222 cited above. Kaut. (III. 15) allows only one night, three nights, five nights and seven nights for repentance to traders, husbandmen, cowherds, the mixed castes and higher castes and provides that where the articles sold are perishable a very short time only may be allowed. The above rules apply only when the purchaser made no examination at the time of purchase. Nār.<sup>867</sup> XII. 4 and Br. (S. B. E. vol. 33 p. 350 verse 3) recommend that a purchaser should himself closely examine an article before buying it and also show it to others in order to find out its defects and good qualities and provide that when he has approved of an article after close examination he cannot return it to the vendor. Vyāsa provides that hides, fuel, bricks, yarn, grain, intoxicants, fluids, gold, inferior metals (like lead and tin) and other wealth should be carefully examined then and there i. e. when once bought after close examination none of these can be returned even if some defect<sup>868</sup> is found therein. Nār. (XII. 5-6) cited above contains exceptions to this. Nār. XII. 7 gives an example of a purchase being not liable to be rescinded when a defective article is purchased with open eyes viz. a worn garment which is soiled with dirt and is in ragged condition cannot be returned to the vendor if it was in that state at the time of the purchase i. e. the maxim '*caveat emptor*' applies. If a purchaser does not take delivery of the thing sold to him, the vendor may sell it again to another<sup>869</sup> and if the thing is lost through act of God or the king the loss falls on the buyer alone (Yaj. II. 255, Nār. XI. 9). Kāt (692) provides<sup>870</sup> that what has been sold by a lunatic or an intoxicated

867. परीक्षितं सर्वं पण्यमन्वेष्टा च यद्वर्जयेत् । परीक्षितं बहुमतं गृहीता न हुनसंपदेत् ॥  
बृह. व. by स्मृतिच. II. p. 220, नि. र. p. 198.

868. धर्मेकादृशकात्प्रधान्यामवरमस्य तु । बहुकुपेतिरूपानां सद्य एव परीक्षणम् ॥  
व्यास व. by स्मृतिच. II. 220, नि. र. p. 198 (roads तुणकाद and बलकुपेत्),  
म्य. व. p. 339.

869. Compare section 46 of the Indian Sale of Goods Act (III of 1930) for the vendor's right of resale and sec. 36 about the person who has to bear the loss of goods.

870. मत्सीममेव विक्रीतं ह्यिममूल्यं भवेन वा । असदन्वेष्टा सुप्तोऽथ वागवै लब्धं पुन-  
र्भवेत् ॥ कात्या. व. by स. नि. p. 312; नि. नि. p. 57, उपर. नि. p. 354 and म्य. व.  
p. 345 ascribe it to बृह.

person or through intimidation or for an inadequate price or by one who is dependant or by an idiot should be relinquished by the purchaser; it still belongs to the seller. Kāt. (705-706) lays down a novel rule to find out what is adequate or inadequate price. What<sup>871</sup> is decided by the neighbours assembled together, who know (the land &c. and its value) and who are afraid of committing sin, as the price of fields, gardens, houses and the like, of bipeds and quadrupeds, is declared to be the proper price; a price which is less or more than it by one-eighth is declared to be improper; what is sold for an improper price may be annulled even after a hundred years. Kāt. (704) states that when the owner of a field absconds together with the surety<sup>872</sup> for the payment of the land tax, the judges of the court may order a sale for recovery of the tax and that such a sale may be set aside up to ten years and a compromise or exchange up to three generations, if it is inequitable. Bhāradvāja provides that when taxes are not paid both by the tax-payer and his surety even when called upon to do so, then the king may order a charge on the land or sale of the land.

*Uktalābha* is defined as a conditional sale, where a man borrows only a portion of the proper price of a land and stipulates that he would return the money on a certain day and that if he did not do so his ownership over the land would come to an end.<sup>873</sup> Kāt. (711) adds that a sale of the *uktalābha* kind will be valid if it is for more than half (the proper price of the land), provided more than ten years have elapsed (after

871. समवेतेषु सामन्तैरभिज्ञैः पापभीक्ष्मिः । शोचरामगृहादीनां द्विपदं च चतुष्पदम् । कल्पितं मूल्यमिवाधुर्भासं कृत्वा तदुच्यते । एकभागानिर्विकं वा हीनं वावृष्टितं स्तुतम् । समाश्रमनार्थमपि सर्वं तद्विनिवर्तते । हीनमूल्यं तु तत्सर्वं कुतश्च कृतं भवेत् । कात्या. q. by स. वि. p. 325, अथ. नि. p. 352; vide बृह. q. by स. वि. p. 326 'मूल्यं दत्तार्थितं स्तुतं मूल्यस्यावृष्टितं स्तुतम् । कल्पितद्विष्टं नैव स्याद्वत्सराणां श्रौतसि' ।

872. यदापिते तु कस्ये करयतिभुवा सह । करारी करद्वेषेच विप्रोणीषुः सभासदः । सन्निधौ पशुनिधौ विप्रभा वा विमोक्तः । अज्ञावाणि कपध्यापि दृष्टास्तु विनिवर्तयेत् । कात्या. and बृहदारण्य. respectively q. by स. वि. pp. 324 and 320; अथ. नि. p. 348 reads slightly differently; अज्ञापिस्तत्कपध्यापि करे दृष्टौ विधीयते । उभात्यग्नौ न स्यातामिति धर्मविदो विदुः । भारद्वाज q. by स. वि. p. 324.

873. किञ्चित् कृपमादाय काले द्वाश्यामि ते कञ्चित् । गो चत्तुष्टमिदं स्वकं केदार-  
रयेति वाः कपः । स तत्कालम् द्वायुक्तं उक्तकालेऽयमर्पणात् । भारद्वाज q. by अथ. नि. p. 331, स. वि. p. 324. This is similar to the mortgage by conditional sale defined in section 58 of the Transfer of Property Act.



the period fixed for repayment). An *avalambya*<sup>874</sup> becomes valid after possession for over three generations and a (regular) purchase by mutual agreement becomes valid at once. Kāt. (712) further<sup>875</sup> prescribes that the unpaid purchase money carries compound interest after demand if no time is fixed for payment, but, if a time is fixed, then only the balance has to be paid up to the end of that period. Br. provides that in all sales, the sale deed should mention the wells and trees (on the land), the water and ways and that the crops, trees and fruits, wells, tanks and house standing on the land sold would belong to the vendor if they are not put down in the deed of sale.<sup>876</sup> According to Hārta the rules of sales are to be extended to exchanges.<sup>877</sup>

From the *Rajataranginī* VI. 41 it appears that a fraudulent purchaser, who, by means of the heavy bribe of 1000 *dīnāras*, induced the officially authorized scribe to include a well in the sale of a house when it was intended to be excluded from it, was banished from the country by the king, his property being confiscated and given over to the cheated vendor.

874. अर्थाधिके क्रयः सिध्दिकलाभो वृत्ताभिवृद्धिः । अवक्रयस्त्रयोपेन सद्य एव दक्षिकया ॥ कात्या. (711) q. by स्व. नि. p. 349 (which reads लक्षिकया at the end, that makes hardly any sense) and स. नि. p. 326. The word अवक्रय is explained in various ways. The Mīt. on Yāj. II. 238 defines it as a transaction whereby a bailer (e. g. a washerman) transfers an article bailed to him (for washing &c.) to another for hire. Pāṇini IV. 4. 30 employs the word 'avakṛiya', but the *Siddhāntakāumudī* explains it as the due to be recovered by a king from a market (or the like). Gaut. XII. 39 employs the word 'avakṛita' which is explained by Haradatta as meaning 'what is purchased, but the price of which is unpaid or only partly paid'. This last seems to be the sense intended by Kāt. who provides that a sale of land, the price being wholly or partly unpaid, would become indefeasible only after enjoyment for three generations. सुमन्तु as quoted in S. V. p. 321 defines अवक्रय as 'अर्पदत्तमर्पणं तु क्रयमाह स्वकयम् । अवक्रयो त्रितयेन यदि काते न दीयते ॥'

875. मूलप्राप्त्यपवादोपे क्रयसिद्धिः कृता भवेत् । अवक्रयश्चा मदात्म्यं द्वेवं तत्त्वम-वाहते ॥ कात्या. 712 q. by स. नि. p. 327.

876. विक्रयेषु च सर्वेषु कृपयुक्तादि लेखयेत् । जलमार्गादि दक्षिजिह्वापर्यन्तं कुह-स्पतिः ॥ अत्रायुर्धनं परिपक्रमस्यं कुशे कते वायुयमोमयोगम् । कृपे तदार्थं युक्तमर्थं च कीर्तये विक्रेतुर्विदं द्वास्ति ॥ कुह. q. by स्व. नि. p. 349, स. नि. p. 326. Compare sec. 8 of the Transfer of Property Act (Act IV. of 1882) as to what passes on a sale. The स्व. नि. p. 349 explains as एवमलिखितेषु क्रेतुर्न माननीयः.

877. अथमृशानमिज्ञातभीतिर्निमित्तः कृतः । दक्ष्यास्तुचितमूल्यं स्वामर्तं तद्विनि-वर्तते ॥ हारीत q. by स. नि. p. 326. Compare sec. 118 of the Transfer of Property Act.

The Vyavahāranirṇaya, after quoting Br. and Vyāsa, very lucidly explains what is meant by sale, purchase, exchange &c. Gold and the like which a man desires to render or pay is called price, while land, house and the like are said to be 'paṇya' (saleable thing). Purchase means acceptance of a thing preceded by the offering of a price (either paid or agreed to be paid); sale is the acceptance of a price preceded by the offering of a saleable thing. *Parivṛtti* or *parivṛttau* is the acceptance of an article for an article of the same kind; if there is a disparity in value between the two articles exchanged the exchange is called '*anukṛaya*'; when there is an exchange of two articles of different kinds but of the same value it is called *vinimaya*.<sup>578</sup> The Vyavahāranirṇaya makes elaborate provisions for sale of land at the order of the king for non-payment of land tax. It quotes Prajāpati (p. 350) to the effect that the purchaser at such a sale must offer half or at least one-fourth of the real price of the field and that the original owner could get back his property sold for the royal dues by paying the full price to the purchaser up to three generations. Other elaborate rules on the same subject are passed over here for reasons of space. These provisions indicate that ownership in cultivated fields belonged to individuals and that the State had only the right to levy taxes. Vide H. of Dh. vol. II. pp. 865-869 and Kāt. quoted above (on p. 196.) for a discussion of the theory of the State's ownership of all lands. Taking into consideration the Pūrvamīmāṃsā texts, the Vyavahāramayūkha and the verses of Kāt. and others it appears that the State was deemed to be the owner of all lands as a general proposition, but that where individuals or bodies of persons had been in long possession of lands that they cultivated, the ownership of the State was qualified and restricted only to the recovery of a tax or share

578. म (वृत्त्यर्थः) पण्यं — आग्नीष्वयं विजातीयं दण्डनादाय चामृतः । कपो-  
त्स्थव्यः (कपोत्स्थव्यः ! ) परिव्रजः साम्ये तु परिवर्तना ॥ इति । पण्यः । आग्नीष्वयं विजातीयं  
दण्डनादाय चामृतः । कपो मूल्यस्य संवातः स्वच्छेत्तुः परस्परम् । परिव्रजः सजातीयदण्डे  
विनिमयः स्मृतः । वैषम्ये विक्रयः योको यिन्ने विनिमयः स्मृतः ॥ इति । स्वच्छेत्तुफलजनका एते  
कपोत्स्थव्यपरिव्रजविनिमया इति । तत्र लोके जिह्वासितं सुवर्गादि मूल्यमुच्यते । उपविदिमसं  
संवर्तनादि पण्यमित्युच्यते । तत्र मूल्यप्राप्त्यपूर्वकपण्यस्वीकारः कयः । पण्यप्राप्त्यपूर्वको मूल्ये  
स्ववजनको मूल्यस्वीकारो विक्रयः । सजातीयप्राप्त्यपूर्वकः सजातीयपण्य स्वीकारः परिवर्तना ।  
वैषम्ये सति परिवर्तनप्राप्त्यपूर्वकपण्ये नोच्यते । विजातीयसजातीयमिश्रपरिवर्तनायोः विजातीय-  
प्राप्त्यपूर्वकप्राप्तौ भवति, सजातीयप्राप्त्यपूर्वकः परिवर्तना भवति । सजातीयविजातीययोः साम्ये विनि-  
मयो भवति । मय. नि. pp. 347-348. The definition of sale given by the  
Vyavahāranirṇaya looks quite modern. Compare sec. 4 of the Indian Sale  
of Goods Act (III. of 1930).



of crops and that individuals and groups that had cultivated lands in their possession were regarded practically as owners of the land subject to the liability to pay land tax and to the right of the State to sell the land for non-payment of tax. The Vyavahāranirṇaya quotes Br. and another smṛti text that śūdras, persons excommunicated for grave sins (*patita*), cāṇḍālas and desperate characters cannot be allowed to possess the lands of a brāhmaṇa by sale, partition or in lieu of wages;<sup>879</sup> the same work further quotes Vyāsa, Bhāradvāja and Br. that when land is sold there is a right of pre-emption in favour of full brothers, sapindas, samanodakas, sagotras, neighbours, creditors and one's co-villagers in order.<sup>880</sup>

Gifts of immovables were looked upon in very ancient times with disfavour, though they were made even in the times of the Upaniṣads. Vide H. of Dh. vol. II. pp. 740-41. But sales of land must have been rarer still in ancient times owing to the patriarchal and joint family systems. The Mīt. on Yāj. II. 114 quotes a verse forbidding the sale of immovable property;<sup>881</sup> but sales of lands are mentioned in many copperplate grants. Vide Paharpur plate grant of Gupta year 159 i. e. 478-79 A. D. in E. I. vol. 20 p. 59 (where one kulyāvāpa of land is stated to have been sold for two *dināras* to a brāhmaṇa and his wife named Rāmi by the city council for the provision of the worship with sandal-wood paste &c. of the divine *arhats* at a *śāhū*), E. I. vol. 17 p. 345 (grant of the time of Kumāragupta I in Gupta year 113), the Damodarpur plates (E. I. vol. 15 p. 113), Faridpur plates (Ind. Ant. vol. 39 p. 193), E. I. vol. 18 p. 74. From these records of the 5th and 6th centuries A. D. it appears that land was owned by private individuals or by

879. मृदाश्च पत्तितोयैव चण्डालाश्चाततायेन । नार्हन्ति विप्रसंवरणं कपटिकव-  
कर्मणि ॥ बृह. १ विमर्शने कपेनापि नेहनश्चद्वयेपि वा । बृहः केनापि कपेन न विप्रक्षितिर्मात्रेति ॥  
रसुत्रान्तर १, by स्वयं. नि. p. 354. With these provisions prescribed at least 1500  
years ago one may compare the South African legislation passed in the  
midst of the Second World War (alleged to be fought for different kinds  
of freedoms) against Indians preventing the purchase by them of lands in  
areas reserved for Whites.

880. अथातः । ज्ञातिमानन्तधनिकाः कर्मेण कपहेतवः । तयास्वतन्त्राः पूर्वे सविष्ठाश्च  
कपे नताः ॥ बृहस्पतिः । श्रोत्राश्च सविष्ठाश्च सोदकाश्च सगोत्रिणः । सामन्ता धनिका प्राण्याः  
सत्तेनैव भूकपे नताः ॥ १, by स्वयं. नि. pp. 355-56.

881. रथापरे विक्रयो नास्ति कुर्वादाधिममृदाया । १, by मिता. on वा. II. 114.

joint families or by the village community or by the king and there was a fixed procedure when land was to be sold, that the purchaser approached the District Officers who consulted the *pustapāṭis* that kept a record of titles and that the villagers and headmen were consulted and asked to mark off the land to be sold. It appears that the *smṛtis* recommended that sales should be clothed in the formalities of gifts, probably because gifts were frequent and sales were not. A *smṛti* quoted by the *Mit.* (on *Yāj.* II. 114) states 'land passes (i. e. is transferred) with the assent of the villagers, the agnatic relations, the neighbours, the co-sharers and with the offering of gold and water.' The *Mit.* explains that these<sup>882</sup> are not absolutely necessary formalities of a sale, but that they are recommended for the sake of greater caution and convenience, that the assent of the villagers is to be secured for the publication of the transaction of sale, as a text says that acceptance, particularly of immovables, should be made openly, that the neighbour's assent should be secured for preventing boundary disputes, that the assent of agnates and co-sharers is desired for making it easy to complete the transaction, that it does not follow that without the assent of these the sale of land is not valid or complete. Water and gold are to be offered because gifts being highly commended, a sale should be clothed outwardly with the same formalities. Vide Dr. P. N. Sen's 'Hindu Jurisprudence' pp. 76-78 for the opposite procedure of the ancient Roman Law that gifts were to be clothed with the formalities of sale. For water and gold in the case of gifts vide above under *dattāpradūnīka*.

*Saṁgṛāhaviśāda* (disputes between the owner of cattle and herdsman who is engaged to look after them). In ancient times this must have been a prominent source of litigation in a predominantly agricultural country like India. *Nār.* appears to have included this title under *vatanaṣṭānupā-karma*. *Yāj.* II. 164, *Nār.* IX. 11 provide that the cowherd has to bring back to the owner in the evening the cows (and other domestic animals) handed over to him in the morning by

882. चक्षुषि-स्वयाम्नाशानि सामन्तदायादाद्युपमेत च । विरच्योक्तदत्तेन चक्षुर्भिर्गच्छति  
 मदिनी ॥ इति तत्रापि ग्रामाद्युपनि-यतिवतः प्रजायाः स्वात् स्वाधराय (स्वाधरस्य ?) विप्रयत्ना  
 इति स्मरणम् । स्वयदाशकाज्ञानार्थमपि यत्ते न पुनर्ग्रामाद्युपया विना स्वयदाशसिद्धिः । .....  
 विक्रयेपि कर्तव्ये साहिरण्यमुद्धकं दत्त्वा दानरूपेण स्वाधरविक्रयं कुर्यादित्यर्थः ।  
 मिता. ०८ वा. II. 114; कलिचक्रः ३८. ३ वा. II. 176.



the owner, after grazing them in the pastures and making them drink water. Manu VIII. 230 says that during the day the responsibility for the safety of the cattle rests on the herdsman and during the night on the owner provided they are in the latter's house. When there is no express agreement as to wages Nār. IX. 10 and Br. (S. B. E. 33 p. 346 verse 19) prescribe that a cowherd<sup>883</sup> will get as his wages all the milk of the cows tended by him on every eighth day plus a heifer (two years old) every year out of every one hundred cows tended by him or a milch cow with her calf every year for every two hundred cows looked after by him. Manu VIII. 231 provides another method when no wages are fixed by agreement viz. a hired herdsman, who is paid with milk, may milk as hire the best cow out of ten with the consent of the owner. It is the duty of the cowherd to struggle as much as in him lies to protect the cows from accidents and if he is unable to do so he must quickly inform the owner (Nār. IX. 12). Br. (S. B. E. 33 p. 346 verse 20) states<sup>884</sup> that the cowherd shall save cattle from the danger of worms (or reptiles), robbers, tigers and from caverns and pits and that he should try to protect them to the best of his ability, should call out for help or inform his master. If the herdsman does not struggle to protect the cows, nor raise a hue and cry nor inform his master he must make good the value of the cow lost and must pay a fine to the king (Nār. IX. 13). Manu VIII. 232 and 235, Yāj. II. 164-165, Vāsp. Dh. S. V.<sup>885</sup> 137-138, Nār. (IX. 14-15) provide that if a cow or other domestic animal strays or is killed by worms (or reptiles) or slain by dogs (and wild animals) or dies by falling into a pit or by any negligent act of the herdsman, he himself shall make good the loss, if he did not exert himself to prevent this happening or if goats and sheep are surrounded by wolves and carried away while the herdsman does not hasten to their help he shall bear the responsibility for the loss. In these cases the herdsman has also

883. तथा वेतुमृतः शीरं लभेत्तादृशदनेऽपि कलम् । बृह. q. by the स्मृतिच. II. p. 207, २५. ५. p. 346.

884. कुमिन्मोरम्पायमवाहरीभिराच्य वालयेत् । व्याकृष्टेऽपि कितः कोशेऽल्पानि वा निवृत्तेत् ॥ बृह. q. by त्रि. र. p. 172, २५. ५. p. 147; the स्मृतिच. II p. 208 ascribes it to मारद.

885. दिवा पशून् वृकाश्च वाते वाते लम्बावति वालदीपः । चित्तपशुमूलं च स्ममिने वृषात् । निवृ. V. 137-138.





that on all sides round a village, a *khurcata* and a town an uncultivated space for pastures (between it and the fields) shall be kept respectively of 100, 200, 400 *dhanus*<sup>891</sup> in extent. *Kāṭ.* (666) prescribes that the owner of a field (which is near a forest) should construct a high paling before the crops have grown; for animals (or deer) when they have once tasted the sweet<sup>892</sup> (crops) can be warded off with difficulty. *Mamū* VIII. 239 = (*Mataya* 227. 25), *Nār.* XIV. 41 prescribe that a hedge should be constructed for a field that is near a public way so high that a camel cannot look inside over it or a horse or cattle cannot jump over or so thick that a dog or boar should not be able to thrust its head inside it through holes. *Mamū* VIII. 238 (= *Matsyapurāṇa* 227. 26), *Yāj.* II. 162, *Nār.* XIV. 40 provide that if a field situated near a village or a pasture or near a public road is not protected by a hedge and cattle straying into it cause loss, the herdsman is not to be held guilty. It is provided by *Āp. Dh.* 8. II. 11. 28. 5, *Mamū* VIII. 240, *Nār.* XIV. 28, *Kāṭ.* 664-665 that if cattle enter into fields,<sup>893</sup> parks or pastures that are situated near a village or a public road and are enclosed by a hedge, they may be seized or beaten off, the herdsman is to be fined (a hundred panas). *Yāj.* II. 159-161, *Mamū* VIII. 241, *Nār.* XIV. 28-29, *Kāṭ.* 667 and others lay down that where cattle enter fields (not near a village or road) and cause loss, the herdsman is to be fined or whipped, the owner of the cattle is to make good the loss and

891. A *धनुः* is 4 cubits (or about 6 feet). *Mamū* VIII. 237 ordains having a space of 300 *dhanus* round a city; it also says that the space round a village for pastures should be three throws of *januyā*. *Āp. Dh.* S. 1. 3. 9, 6 and 23 employ the expression *अश्वयानस* for stating distance. *अश्वयानस* means yoke-pin (*युगकीलक*). Vide p. 145 note 165 above for *dhanus* and other measures of distance. In *E. I.* vol. I. pp. 154-155 a *दारमेधरीय हस्त* (the king's hand) is mentioned in an inscription dated *sarvāt* 933 at Gwalior. A *दण्ड* was 4 *हस्त*s but there were *दण्ड*s of 7 or 10 *हस्त*s. Vide *मिता.* on *वा.* II. 106. It was but natural that in ancient times man relied upon his own fingers or hand or height as a measure of length. Vide *H.* of *Dh.* vol. II. p. 309 n. 485 and n. 2021 (for *हस्त*, *दण्ड* and *निर्वातन*), p. 1034 (for *Vedi* being as much in length as the height of the sacrificer) and *puruṣa* as a measure of length in *ते सं* V. 2. 5. 1 and *कात्यायनश्रौत* 16. 8. 21-23. Vide also *H.* of *Dh.* vol. II. p. 989 n.

892. *अमतेष्वेन कश्चेत् कुर्वादावरजे मय्य* । इःकोनेन निवार्यन्ते लब्धस्वादुरसा दूमाः । *कात्या.* 666 q. by *अपराज* p. 770, *सुलिच.* II. p. 209.

893. *शेवाराजनिर्गतेषु यज्ञेषु यजुषादिषु* । यज्ञे तत्पविशानो तावत्तं वा बृहस्पतिः । *कात्या.* 664 q. by *सुलिच.* II. 208, *वि. र.* p. 241. *दिव्या ब्रजमादिनः कश्चेत् पश्येत्* । *अथ.* p. II. 11. 38. 5.

pay the fine prescribed and the fines vary e. g. Yaj. II. 159 prescribes fines of 2, 4 and 8 *māsas* respectively when a goat or a cow or a she-buffalo strays and causes loss of crops, while Kṣi. (667) prescribes only  $\frac{1}{4}$  *pāpa* in the case of cows and sheep and  $\frac{1}{2}$  in the case of she-buffaloes. Vide Gaut. XII. 19-22 and Kauṣ. III. 10 also. Those who purposely set cattle to eat or destroy crops were to be punished as thieves (Nār. XIV. 34).

Ancient India entertained tender feelings for certain animals and in certain circumstances. Nār. XIV. 30, Yaj. II. 163, Manu VIII. 242, Kauṣ. III. 10<sup>894</sup> and Uśanas provide that cows within ten days after calving, a stud bull, a horse, an elephant, animals let loose in honour of ancestors or deities, and cattle that have strayed from the herd or that have no herdsman to look after them and have met with an accident are to be warded off when causing harm to crops, but the owner is not to be fined. Uśanas<sup>895</sup> states that the reason for this leniency is that horses and elephants are protectors of people. Aparārka (p. 771) explains that this exemption applies only to the king's horses and elephants. Uśanas adds that (owners of) cows should not be fined when they cause some loss at the time of festivals and śrāddhas. The great veneration for cows led Uśanas to lay down that he who requires the owner of a cow to re-imburse the loss of crops that are eaten up or destroyed by a cow will find that his *pitṛs* and the gods do not receive the offerings made<sup>896</sup> by him. This is explained by the Par. M. III. p. 385 as referring to crops in fields near a village not enclosed by a hedge and by the Madanaratna to crops eaten at the time of śrāddha. Br., Yaj. II. 161 and Nār. XIV. 38 require the owner of the cow to re-imburse the owner of the crops for the loss as settled by the neighbours. Vide under 'steys' for cases in which there is no offence of theft even if a person takes certain things belonging to another without his permission.

894. वामदेवद्वया वा अनिदमाहा वा पशुकृत्तानो योद्वयाश्चाद्वयकाः । अर्धमास III. 10.

895. अद्वयत्वा वृत्तिर्नो ज्ञानाः संज्ञापादा हि ते स्मृताः । अद्वयत्वा कालकुम्भो च ये ज्ञानकुम्भस्तथाः ॥ अद्वयवामन्युतो नोथ वृत्तिका वानिधारीणो । अद्वयवाञ्छोत्सवि वातः सान्द्राक्षो तथैव च ॥ उशनस् पृ. by मिता. on वा. II. 163, वि. र. p. 240. Compare Nār. XIV. 31-32 where two half verses are the same as in Uśana. Manu VIII. 242 mentions देवपशून्, which Sm. C. II. p. 212 explains as 'देवपशवो हि देवताप्रतिमादीनां कीर्यमानाद्यर्थे तदुद्देशेन वृत्ताः'.

896. गोभिर्निनाशितं धान्यं वा नरः प्रतिवाचते । पितरस्तस्य वादन्ति वादनंति विदि-  
वीकतः ॥ उशनस् पृ. by अपरार्क p. 770, वि. र. p. 232.



## CHAPTER XXII

### SĪMAVIVĀDA (boundary disputes).

This is called *śāstravivāda*<sup>897</sup> (disputes relating to fields) by Nārada XIV. 1, who defines it as 'dispute with regard to land in which questions about dikes or embankments, the boundaries of fields, ploughed land and fallow land have to be decided.' Nārada's idea appears to be that the word 'śīmavivāda' in Manu is only illustrative and is a compendious way of mentioning disputes about land in general. According to Kāt. (732) there are six causes<sup>898</sup> of land disputes viz. claiming more land, claim that a person is entitled to less than he possesses, claim to a share, denial of a share, seizing possession when previously there was none, boundary. In all these cases boundaries have directly or indirectly to be settled and therefore all these are included under the topic of *śīmavivāda*. A boundary dispute may relate to the boundaries of a district (janapada), a village, a field and a house. Boundaries, acc. to Nār., may be of five kinds.<sup>899</sup> They are described as follows: *dhvajini* is what is indicated by trees which are like a flag-staff. Manu (VIII. 246-247) prescribes that trees such as *āśvattha*, the silk cotton, *śāla*, *tāla* (palmyra palm), that have milky juice (like *udumbara*) should be planted to indicate boundaries and also bamboo clumps, bushes, reeds &c. A *matanjini* (lit. having fish) boundary is provided by rivers flowing naturally and full of fish and tortoises or by tanks and reservoirs of water (Manu VIII. 248). A *naithāni* boundary is one indicated by concealed signs (just as *nidhāna* i. e. treasure is concealed in the earth), such as pots filled with chaff, coal, bricks, bones and similar things that the earth does not corrode

897. सप्तकेदारमर्गादतिक्रान्ताकुलनिधये । क्षेत्राधिकारो यस्तु स्याद्विवादः क्षेत्रजस्तु सः ॥  
नारद XIV. 1, सि. र. p. 201 takes केदारमर्गादा as one word, while च. य. p. 353 holds *kedāra* and *maryādā* separate. त्रिकुलो लाङ्गलजलो देवा, अकुलमात्र-हितः ।  
च. य. p. 353.

898. आधिक्यं न्यूनता चोदो अस्तिनास्तित्वमेव च । अनोपश्रुतिः सीमा च यद्धुः  
सादाय तैलवः ॥ कात्या. 732 q. by मिता, on वा. II. 130, सि. र. p. 201, आचार्य p. 259,  
च. य. p. 353. Vide the मिता, and च. य. for explanations.

899. पञ्चिनी मरिचको चैव तेषां नी अपवर्जिता । राजदासमनीता च सीमा यज्जनिता  
स्युता ॥ नारद q. by मिता, on वा. II. 130.

and are buried inside the earth. Manu (VIII. 250-251) enumerates those objects that should be buried in the earth, which would serve to indicate the boundaries of a village or field and which are therefore called concealed (*upacchanna*) by him. A *bhayanarjita* (free from danger) boundary is settled by the agreement of the parties. The fifth kind is the one that is laid down by order of the king. Br. (S. B. E. 33 p. 351 verse 2) prescribes<sup>200</sup> that at the time of founding a village definite boundaries should be erected or constructed by means of visible or patent (*prakāśa*) and concealed (*upāṃsu* or *upacchanna*) signs and the Sm. C. II. 228 explains that a row of big stones should be employed to indicate the boundary. Bṛhaspati (S. B. E. vol. 33 p. 351 verses 3-7) states what patent and concealed boundary marks should be and requires elderly persons to point them out to youths and children who in their turn when old are to point out the boundaries to other youths and in this way traditional knowledge of boundaries may be kept up. Manu (VIII. 252-253) states that in disputes boundaries should be settled in accordance with the visible and concealed signs described above, by reliance on long former enjoyment and by the constant flow of water and that if there be doubt even after observing the signs then the dispute has to be decided on the evidence of witnesses. Witnesses could either depose to the marks of boundaries or to the boundaries themselves. Those who could not point out the marks but were to define the boundaries themselves were to follow a certain procedure. Manu VIII. 254 states that the witnesses should be asked about the marks of boundaries in the presence of the litigating parties and groups (or families) of the villagers. The witnesses on being asked were to trace, point out and settle the boundary unanimously, being clad in red garments, wearing red chaplets and being exhorted to depose truly by their spiritual merit<sup>201</sup> and carrying clods of earth on their heads, by reference to mounds or depressions, coals, bones and chaff (buried underground,

200. लिखितकाले कर्तव्यः सीमासम्भविनिश्चयः । यकासोपांशुचिह्नैश्च लङ्घितः संज्ञा-  
यः ॥ बृह. १. १. by स्मृतिच. II. p. 227, which says: यामादिपञ्चकाले सप्तसीमानियामक-  
श्चतुष्टयकः स्यादसुप्तलिङ्गैरेतैः सीमासम्भो स्यादसीच इति ।

201. On सुकृतैः स्थापिताः स्तैः स्तैः, वि. १. p. 211 remarks: धर्मो असमाई क्षीया  
नवन्ति यदि निरुपा वदाम इति वादिता इत्यर्थः । सीमाविवादं धामयौद्धमयोः सामन्ताः पञ्च-  
यानि पुरुषाणि वा सप्तभिः स्थावरीः कुक्षिमेवा कुपयन् । कर्षकसोपासहस्रकाः पूर्वमुक्तितः वा,  
अथाद्याः सप्तयामभिज्ञा पञ्च एकौ वा निर्दिष्टः सीमासंज्ञा विपरीतविधाः सीमानं नयेत्तु ।  
क्षेत्रविवादं सामन्तधामयुद्धाः कुर्तुः । अर्थशास्त्र III. १.



in a vessel), embankments, anthills, platforms of stones or bricks (Manu VIII. 255, 256, Yāj. II. 151, Nār. XIV. 4-6) Vas. 16. 13, Kauṭ. III. 9, Yāj. II. 150, Manu VIII. 258, 260, Nār. (XIV. 2-3) prescribe that on failure of witnesses of the adjoining villages, neighbours (sāmānta),<sup>902</sup> old men, cowherds husbandmen who plough the fields near the one in dispute, hunters, fowlers, fishermen, snake catchers and foresters should settle the disputed boundary in the presence of the king. The Mit. on Yāj.<sup>903</sup> II. 153 quotes Kāt (743-745, 51) to show that witnesses were divided into sāmānta, manṭa, viddha and uddhṛta, each preceding group being superior to the succeeding. The Mit. further says that the neighbours as witnesses are to be arranged in the form of the layers of the petals of a lotus viz. the nearest ones (śāntakṛtaka) are those most preferred, (but if this group has faults) then a second but a more removed group and then a third group still more remote may be examined. Śāṅkha-Likhita and Vas.<sup>904</sup> 16. 13-15 prescribe that in boundary disputes the decision depends on neighbours, in the case of conflict of witnesses on documents and then on the old men in the town or village and the guilds. Yāj. II. 152 and Manu VIII. 258 require that the neighbours who are to settle the boundary should be four, eight or ten (even in number) and inhabitants of the same village (if possible). Br. (S. B. E. 33 p. 352 verse 14) requires that the witnesses<sup>905</sup> should know the source of title (to the disputed land), the measurement (in *niartanas*, *dhūṇas* &c.), the length of enjoyment or possession, the names of persons (in possession) and the characteristic geography or lie of the land. The general rule was (as stated by Nār. XIV. 9)

902. समन्ताद्भवः सामन्ताः । चतसृषु दिवसन्तराग्रमादृश्यते च पतिर्सीमे स्थव-  
रिभ्यः-ग्रामो ग्रामस्य सामन्तः श्रेष्ठं क्षेत्रस्य कीर्तितम् । यदा दृश्य विविदं समन्तात् वीर-  
रस्य हि ॥ इति कात्यायनवचनम् । ग्रामादिशब्देन तस्याः पुरुषाः सङ्गृह्यन्ते । मिता,  
on वा. II. 151.

903. तेषामन्त्राणे सामन्तमालङ्करोद्भूतादृशः । तेषां च दृश्यकारोपि कार्यं नात्र विचार-  
यता । कात्या. 737, q. by मिता, on वा. II. 152, वि. र. 206.

904. दृश्यक्षेत्रविरोधे सामन्तमालयः । सामन्तविरोधे लक्षणभयः । अन्तर्भिलेखविरोधे  
ग्रामनगरवृद्धश्रेणियपयः ॥ वसिष्ठ 16. 13-15 ; दृश्यक्षेत्रविरोधे सामन्तमालयः । सामन्त-  
विरोधे अन्तर्भिलेखमालयः अभिलेखविरोधे ग्रामनगरवृद्धश्रेणियपयः ग्रामनगरवृद्धश्रेणिविरोधे  
वृद्धक्षेत्रलक्षणमालयः राजविपयः । शङ्खुल्लिखितं q. in वि. र. p. 308. स्वार्थसिद्धौ बहुषु  
सामन्तस्य धर्मोक्तम् । तत्संज्ञैस्तु कर्तव्यं उद्धारो नात्र संज्ञाः । संज्ञासकदोषेषु तत्संज्ञाः  
अधीयताः । कर्तव्या न बहुषु राज्ञा धर्मे विज्ञानता । कात्या. q. by मिता, on वा. II. 152.

905. अग्रमे च वमार्णे च भोगकाले च नाम च । दूषागलक्षणं चैव ये विदुरल्लेख  
साक्षिणः । वृद्ध. q. by मिता, on वा. II. 152, परा. भा. III. p. 392, म. प. p. 355.  
Some works read योगं काले च.

that a single witness however confident he might be (or however reliable) should not take upon himself to point out and settle the boundary, since this (boundary) dispute being a very important (difficult) matter, its decision should rest with many. The *Mit.* (on *Yaj.* II. 152) explains that this prohibition holds good only if the single witness is one not accepted by both sides as reliable. But *Nār.* (XIV. 10) and *Br.* (S. B. E.<sup>906</sup> 33 p. 352 verse 11) hold that where a single witness accepted by both sides has to settle the boundary (in the absence of more witnesses and in the absence of reliable patent or concealed signs) he should do so after placing a clod of earth on his head, after being dressed in red robes and wearing red flowers and after observing a fast. If it was a *śūdra* who was to trace or lay down a boundary *Viśvarūpa*<sup>907</sup> on *Yaj.* II. 156 quotes a prose passage of *Bṛhaspati* that he was to be decked in red pieces of cloth, his face was to be smeared with ashes from a cemetery, a mark was to be made on his chest with five fingers dipped in the blood of a goat and the entrails of the sacrificed goat were to be tied round his neck and he was to hold a clod of earth in the right hand. All this was to impress upon him the gravity of the work and the necessity of doing his best impartially. If no knowing witness or no patent or concealed signs are available the king has himself to settle the boundary between the two villages at his own discretion (*Yaj.* II. 153, *Nār.* XIV. 11, *Manu* VIII. 265). He may divide the land between the two villages equally and construct new marks of boundaries, but if the disputed land will be of greater benefit to one village than to the other the king may assign the whole of the disputed land to the former. *Manu* VIII. 245 prescribes that when there is a boundary dispute between two villages the king should decide it in the month of *Jyēṣṭha* when the embankment (marks) become quite clear (owing to water being dried up in summer). The decision made by the witnesses or neighbours became final only after the lapse of three weeks if no calamity (from act

906. ज्ञातुश्चिह्नैर्विना साधुरेकोऽप्युपपन्नैः । रक्तमालास्त्रयरो वृद्धमादाय सूर्यनि ।  
मत्तवक्तः सोपवासः सीमानं दर्शयितः । बृह. 4. by स्मृतिच. II. 2. 231, या. मा. III.  
p. 323, अथ. प. p. 359; *Ms.* of *मदनमोहन* reads सीमानम्.

907. शूद्रानां तु पञ्चाह वृद्धमतिः । यदि शूद्रो नेता स्वानं क्रैष्णेनालङ्कारेणालङ्कृत्य  
अवनम्यमा मुखं विलिङ्गमात्रैरव पश्योः शोषितेनैवमि पञ्चाहकुलानि कृत्वा त्रीणांमात्राणि  
प्रतिमुच्य सत्येन याणिना सीमालोष्ट सूर्यनि पारयेदिति । रक्तकर्पूरमलनादिः क्रैष्णोल्ङ्कारः ।  
विश्वरूप.



of God or king) befell the witnesses (Kāt. 751).<sup>908</sup> Manu prescribes (VIII. 261) that the boundary settled by witnesses should be fixed by the king (or recorded in a document containing the names of witnesses). An ancient instance of the fixing of boundaries by two feudatory chiefs is recorded in the Bhumara stone Pillar inscription of the Parivrajaka Mahārāja Hastin and Mahārāja Śarvanātha, who erected a pillar at Ambhoda to show the boundary between their territories about 510 A. D. (vide Fleet's Gupta Inscriptions No. 24 p. 110). Vide also E. I. vol. 24 pp. 32-34 for inscriptional evidence about the carrying out of all the details laid down in dharmasāstra works on the settlement of boundaries. Manu VIII, 263, Yaj. II. 153, Nār. XIV. 7 prescribe the middle amercement for each one of the *sūmantas* that falsely settle the boundaries, while Manu (VIII. 257) and Nār. XIV. 8 prescribe the first amercement only for other witnesses such as members of corporations and elderly villagers. If through friendship, greed or fear the witnesses who know the facts do not come forward to settle the boundary they are each to be fined in the highest amercement (Kāt.<sup>909</sup> 750).

Bṛ. (S. B. E. 33 p. 353 verses 19-21) lays down certain interesting rules about alluvion and diluvion. Where a river is the boundary between two villages and the river carries away soil from one village and attaches it to another, the accretion belongs to the village to which it becomes attached, but this is so when the soil carried away has no crops growing on it; if however soil with growing crops is separated from a village and joined to another by a river in flood, the former owner can reap only the crops and the land will belong to the village or field to which it has become attached<sup>910</sup>.

908. सीमावहकर्मणे कोत्रे पादुष्ये तथैव च । त्रिपक्षपक्षसमार्थं दैवराजिकमित्यते । कात्या. 751 q. by मिता. on वा. II. 152, V. P. (p. 359) adds 'यथासंख्यमिति शेषः'.

909. बहुतां तु लुहीतानां न सर्वे विप्रेषं यदि । कुर्यन्मयादा लोभादा दाप्यास्तु चमसाहसम् । कात्या. 750 q. by मिता. on वा. II. 152, अथर्वक. p. 763.

910. सामयोरभयोपेक्षं नपांदा कल्पिता नदी । कुर्वते दानद्वरणं मायामाग्नयज्ञान्धमाय । एकत्र क्लृप्तपातं तु चूनेरुपच संरिपतिम् । नदी तीरे प्लुक्ते तस्य तं न विचालयेत् । क्षेत्रं सशस्यमुल्लङ्घ्य भूमिनिष्ठया वद्धा भवेत् । नदीस्रोतःप्रायेण पूर्वस्थानी लभेत वाय । इह. q. by वसुनिच. II. p. 234, वास. भा. III. pp. 398, 399, जि. इ. 217, अ. व. p. 362; the latter explains: तस्य नदीवशात्पातचूर्णिकरव तां प्राप्तां भूमिं न विचालयेत् मायया कुर्वते पूर्वस्थानी नापच्छिन्नादिरूपधेः । एतदुल्लङ्घनस्यतीरनिष्ठवम् । उत्तरीरविषये पुनः स एव-क्षेत्रम् । तां सशस्य-भूमिम् । उत्तरीरफलक्षान्नवर्षन्तमेतत् । उत्पल्लवाभावात्तरी तु न पूर्वस्थानी तां भूमिं लभेत इत्यप्यन्तरवम् । The जि. इ. p. 217 holds a different view: 'यत्र तु नदी क्षेत्रादिकं समुल्लङ्घ्य कातिं तत्र पूर्वान्तरपक्षे सा भूमिरितिपक्षः ।'.

Manu VIII. 262, Yaj. II. 154, Nār. XIV. 12, Kāt. 749 prescribe that the decision of disputes about the boundaries of fields, wells, tanks, groves and parks, palaces, houses, cottages, temples and channels carrying rain water is to be similarly arrived at by the testimony of witnesses (*sāmantas* and others).

Several rules are laid down by Nār., Br. and Kāt. about easements and water-courses.

Br. (S. B. E. 33 p. 354 verse 24) prescribes that no<sup>911</sup> interference should be caused to the manner of the enjoyment of houses (as regards doors, compounds &c.), to the enjoyment of water and markets in the way in which they had been enjoyed from the time the village or house was established or built. This means, acc. to the Sm. C. II. p. 234 and V. P. p. 363 that if a new mode of enjoyment is started in the case of these after the village was established or the house was built then interference may be allowed. Br. (S. B. E. 33 p. 354 verse 25) further says that ancient windows,<sup>912</sup> watercourses, balconies (pegs?), raised platforms on the borders of streets, waterspouts carrying rainwater from a square of houses (and cottages) enjoyed from former days should not be allowed to be interfered with, even if they might cause some inconvenience to the neighbouring house. Kāt. (752-753) similarly provides 'one should not interfere with the base of the wall, a drain (or waterspout), a balcony, window, watercourse and dwelling house of another. These are not to be added to one's house after the first building of it (so as to cause obstruction or annoyance to another), one should not open a window<sup>913</sup> (so as to command a view) in the interior of another's house or open a spout (that will drain off

911. निवेशकालादारम्पं यद्वर्षायाणादिकम् । तेन वाक्येन मुक्तं तस्य तत्र निश्चालयेत् । वातायनं यन्मार्गं च तथा निर्गुहवेदिकाः (निर्गुह ?) । चतुःशालस्वन्दिकाः पादनि-  
निष्ठा न चालयेत् ॥ बृह. II. by अपराकं p. 764. स्मृतिच. II. p. 235, म. म. p. 363.  
'एष निवेशनकाले कल्पितं मरालादिकं पादिवेदयानिदिकार्याणि न केनचित्कालमीपमिवाह  
स एव' स्मृतिच. II. p. 235; निर्गुहो द्वारनिर्मितकाष्ठविशेष इति कुत्पक्षत्पत्तरी निर्गुहो  
युद्धकोण (युद्धयोग!) इति स्मृतिचन्द्रिकायाम् । वेदिका रथवाद्यिपदेभ्यस्तुल्योत्तरा भूमिः ।  
म. म. p. 363. These words are taken from the मदनमाला.

912. Compare section 15 of the Easements Act (Act V of 1882) for the acquisition by prescription of easements of light and air for a building, of support or of right of way &c.

913. 'One should not open a window &c.'—This right of privacy is recognised even now by the courts as enforceable in Gujerat. Vide *Nathubhai v. Chhaganlal* 2 Bom. L. R. 454, *Maneklal v. Mohanlal* 22 Bom. L. R. 226.



water) on to another's house. One should construct places (pits) for depositing ordure, urine and filthy water, a fireplace and a pit at a distance of at least two cubits from the walls of other people (his neighbours) and should not construct these very near to another's house' (vide also Br. S. B. E. vol. 33 p. 354 verses 25-26).

Br. (S. B. E. 33 p. 354 verse 27) defines a *śālesamāna*<sup>914</sup> as the road by which men and beasts pass to and fro without let or hindrance. Kāt. (755) calls it *catuṣpātha* and defines *rāja-mārga* as the road by which people are allowed to pass at certain times (and not at all times). Several rules are prescribed by Kautīlya and others for obviating nuisances on public roads or near private houses. Br. (S. B. E. 33 p. 354 verse 28) and Kāt. (756) provide that roads should not be obstructed by parking<sup>915</sup> carts and the like thereon, that no one should plant anything on a public road, that a man who puts obstruction on the public road, makes pits or plants trees or wilfully voids excrement thereon should be fined a *māṣaka*, and one who does not give<sup>916</sup> precedence on the road to his *guru*, preceptor or the king should be fined. Manu IX. 282 prescribes the fine of two *kārṣāṇas* for voiding or dropping ordure on the public road in the absence of distress and requires the wrongdoer to clean the road, but Manu (IX. 283) makes an exception in the case of persons diseased, very old men, a pregnant woman and a child, who are not to be fined but only reproved for voiding ordure on the road. Vide Matsya 237. 175-76 for the same two verses. Kaut. II. 36<sup>917</sup> prescribes the fine of  $\frac{1}{2}$  of a *pāpa* for throwing dust on a cart-road and  $\frac{1}{4}$  for obstructing it with mud and a fine double of these

914. यान्वापानि जना येन पशवश्चानिवारिताः । तदुच्यते संसरणं न रोद्धव्यं तु केनचित् । बृह. प. by अपरार्क p. 765, स्मृतिच. II. p. 233; सर्वे जनाः सदा येन वपानि न चतुष्पथः । अनिषिद्धा यथाकालं राजमार्गः स उच्यते ॥ कात्या. 755 q, by स्मृति. II. p. 235, वि. र. 221.

915. यस्तत्र मङ्गलं शब्दं वृक्षारोपणेन च । कामादुरीषं कुर्वीत तत्र दण्डस्तु नापकः । बृह. प. by अपरार्क p. 765, स्मृतिच. II. p. 235, वि. र. p. 221 ascribes this verse to कात्या. and notes that इतिहर and others ascribe it to वृजयदत्ति. न तत्र रोपये-  
त्किञ्चिदपहन्नातु केनचित् । सुर्वार्षार्चहपादीनां मार्गोद्धानातु दण्डभाक् ॥ कात्या. 756 q, by वि. र. p. 221.

916. For precedence on the road, vide H. of Dh. vol. II pp. 146-147.

917. पशुसम्प्राप्ते रथवायान्द्वयानो दण्डः । पशुद्वयसंनिरोधे पादः । राजमार्गे द्विगुणः । दूयसम्प्राप्तौ दूयसम्प्राप्तौ दण्डः । राजपरिषदेषु पणोत्तरा विडादण्डः । मूषेण च दण्डः । भयवशा-  
द्यन्यनमित्तमदण्डः । अर्थशास्त्र II. 36.

for doing the same on a royal road; prescribes a fine of one, two, three or four panas respectively for voiding ordure on or near a holy place, or a place whence water is taken, or a temple or the king's buildings and exempts from fine such persons as those mentioned in Manu IX. 283. Kat. (758-759) provides<sup>918</sup> that he who defiles a tank, a garden or holy water (or *ghats*) by throwing filthy matter (ordure &c.) therein should be made to remove the filth and fined the first amercement and also one who pollutes by washing soiled clothes in holy and purifying sacred places (*ghats* &c.) established by great or saintly persons. Yaj. II. 155 prescribes the first, the highest and middling amercements respectively for making breaches in the boundary (between two or more fields), for ploughing a field beyond the boundary of one's field and for depriving a man of his field by intimidation and the like. Vide also Visnu Dh. S. V. 172 and Śaṅkha-Likhita<sup>919</sup> who prescribe a fine of 1008 panas for transgressing (the whole of) the boundary (of a field). Manu VIII. 264 (= Matsya 227. 30) provides a fine of 200 panas for seizing another's field, garden or house through inadvertance, but 500 for seizing any one of these by intimidation. Nar. XIV. 13-14 and Kat. (760-761) state<sup>920</sup> that the fruits and flowers of those trees that grow on the boundary between two fields should be declared (by the Judge) as joint between the owners of the two fields and that if the branches of trees growing in one man's field spread over another man's field that man should be understood to be the owner of the trees and branches (together with fruit &c.) in whose field the trees are born (have taken root). The first proposition implies that if one owner

918. तत्रागोद्यानतीर्थानि चोद्ग्रेधेन विनाशयेत् । अग्रेधे शोधयित्वा तु दण्डयेत् पूर्व-  
साहसम् ॥ दण्डयेत्सिद्धतीर्थानि स्थापितानि महात्मभिः । पुण्यानि पावनस्थानानि नाम्नात् पूर्व-  
साहसम् ॥ कात्या. q. by अपराकं p. 765, स्मृतिच. II. 235, च. 2. p. 365.

919. सीमापथिकमे लघुसाहसम् । शङ्खलिखित q. by स्मृतिच. II. p. 236, च. 2. p. 366; सीमाभेदारुभुजमसाहसं दण्डयित्वा पुनः सीमां लिङ्गान्ध्यां कारयेत् । विष्णुधर्मसूत्र V. 172, which स्मृतिच. II. p. 236 explains as 'तत्र सीमाभेदारुमित्यत्र सीमावृत्तं रूपं कर्षकानिपथोऽवकसेयः । सीमापदेऽपि पुनः कर्षनाद्यकरणमेव पुनः सीमाकरणम् । तद्यथा भवति तथा राजा धनेतेति पुनः सीमां कारयेदित्यर्थः', The text in Mr. Gharpure's ed. is corrupt.

920. सीमामध्ये तु जातानां वृक्षाणां क्षेत्रयोर्द्वयोः । कलं दुष्पं च सामान्यं क्षेत्रस्वामिभु-  
विर्दिशेत् । अन्वक्षेते तु जातानां शाखा वृक्षान्वसरेवजाः । स्वामिने ते विजानीयादथ च क्षेत्र-  
संभितता ॥ कात्या. 760-61 q. by अपराकं pp. 765-767, स्मृतिच. II. p. 236, नि. 2. 223. Narad XIV. 13-14 are almost the same, reading स्वामिन्त्वा विजानीयादन्वक्षे-  
तनिर्गताः.



alone takes all the fruits he is liable to be fined for taking half the fruits.

A *setu* (watercourse) is said by Nār. (XIV. 18) to be of two kinds, viz. that which is dug (*khopa*) into the soil in order to drain off excessive water and that which is constructed (*bandhya*) as an embankment to prevent water from flowing away. Yāj. II. 156 and Nār. XIV. 17 provide that a *setu* made by the owner of one field in the neighbouring field should not be forbidden by the owner of that field, if the loss of soil it causes (to the latter) is small as compared with the great benefit that it may confer. Nār. (XIV. 20-21) and Yāj. II. 157 prescribe that one should make a dike or watercourse on another's land with the permission of that man or with the permission of the king as otherwise he cannot reap the benefit thereof. Kāt. (762-63) provides a similar rule about the repairs to a house or garden or tank made by a stranger without the owner's or the king's permission. It is stated by Nār. (XIV. 23-25) that when the owner of a field is unable (to cultivate it) or is dead or is not heard of, if a stranger cultivates the field without objection from any body, the stranger shall enjoy the produce of the field, that if the owner (or his son) returns while the field is being tilled by a stranger, he can get his field back on repayment to the stranger of all the money expended on making the land (ready for crops). If the owner is unable to return the expenses, the stranger may retain  $\frac{1}{4}$ th of the produce every year for eight years giving  $\frac{1}{4}$ th to the owner every year and should hand over the field to the owner when the 8th year arrives. Yāj. II. 158 and Vyāsa provide that if a person takes a field from the owner on rent for cultivation, but gives up the cultivation after slightly ploughing it and does not employ someone else to complete the cultivation, then he should be made to pay the produce that would have been recovered from the field if properly cultivated and also should be fined and the field may be taken from him and given to another tenant<sup>921</sup>.

921. लेखे श्रुतीनां यः कश्चिन्न कुर्वाणश्च कारयेत् । स्वामिने स शब्दे दातव्यो राज्ञे दण्डं च तत्तमम् ॥ व्यासः q. by मि. नि. p. 65, ध्य. ४. p. 368; स्मृतिच. II, p. 232, यसा. मा. III. p. 408 ascribe this to बृह.

## CHAPTER XXIII

### VĀKPĀRUSYA AND DANDAPĀRUSYA

(Abuse and defamation; assault)

Vākpārusya, dandapārusya, staya, strisaṅgrahaṇa, sāhasa are five titles out of 18 that are concerned with what may be called criminal matters or crimes in modern nomenclature. Vide under *sāhasa* below.

Nār. XVIII. 1 defines *vākpāruggya* as 'abusive words that loudly proclaim censure of another's country, caste, family and the like and that cause mental pain or offence to that man.' Kāt. (768) defines it as<sup>922</sup> consisting in making the sound 'hum' (of defiance) before another or coughing before him, of imitating or uttering before another whatever is censurable according to popular notions. Nār. (XVIII. 2-3) says that abuse is of three kinds, *niṣṭhura* (reproachful such as calling a man a fool or a rogue), *atīla* (obscene or insulting), *tīra* (mercilessly severe such as charging a man with such grave sins as brāhmaṇa-murder or drinking liquor) and that the punishment for each later one is more severe than for each preceding one. Examples of the abuse of country, caste and family are respectively 'the Gaudas are quarrelsome', 'brāhmaṇas are extremely greedy', 'persons of the Viśvāmītra gotra commit cruel deeds'. Bṛ. (S. B. E. vol. 33 p. 355 verses 2-4) divided vākpārusya into three kinds viz. lowest (when the country, caste or family of a person is abused or sinfulness is ascribed without specifying any definite act), middling (speaking that the abuser will have sexual intercourse with the mother or sister of the abused or ascribing the commission of *upapātakas*<sup>923</sup> or minor sins to the abused), highest (charging him with taking forbidden food or drink or mercilessly exposing or ascribing the grave sins to a person). Various fines are prescribed in the smṛtis that depend upon the above distinctions and also on the castes of the abuser and the

922. दृष्ट्वाः कामनं चैव लोके वच निगर्हितम् । अलुक्त्वादिभ्युत्पाद् वाक्यादयं तद्-  
वन्तः ॥ कात्या. (768) q. by अपरार्क p. 805, स्मृतिच II. p. 6.

923. For *upapātakas* vide Manu XI. 59-66 (such as *govadhā*, adultery),  
Yāj. III. 234-242, Viṣṇudharmasūtra (37) which contain long lists of them.



abused. For example, Manu VIII 267 (= Nār. XVIII 15 = Matsya 227, 66) prescribes the punishments of 100 *panas*, 150 or 200 *panas*, corporal punishment respectively against a *kṣatriya* or a *vaiśya* or a *śūdra* abusing a *brāhmaṇa* and conversely Manu VIII 268 (= Nār. XVIII 16) provides that a *brāhmaṇa* calumniating a *kṣatriya*, *vaiśya* or *śūdra* should respectively be fined 50, 25 or 12 *panas*. In the case of the abuser and the abused being of the same *varṇa* the fine for ordinary abuse is 12 *panas*, but double of this if the abuse is, according to Manu VIII 269 (= Nār. XVIII 17), foul (relating to mother, sister &c.). Vide Yāj. II. 205-207, Viṣṇudharmasūtra V. 35. From the remarks of the Sm. C. and the Madanaratna it appears that these discriminating provisions<sup>224</sup> based on the caste<sup>225</sup> and the ascription of minor or grave sins had become a dead letter and were not being enforced by the kings in India by the 12th century A. D. at least. One or two matters, however, may be noted. Manu VIII. 268-272 and 274 are the same as Nār. XVIII. 16-17, 22-24. Even the truth of an imputation<sup>226</sup> afforded no complete exemption e. g. if a person angrily calls a man a thief (who was once convicted of it) or speaks of him as blind or cripple, the former would be fined at least one *kāśāpana* (Manu VIII 274 = Nār. XVIII 18). Kāuṭ. (III 18) provides in this case three *panas*<sup>227</sup> as fine and Viṣṇudharmasūtra (V. 27) two *panas*. When the

224. एवं जातिदुष्टयोर्विशेषविशेषदुर्ज्ञे तथा प्रथममध्यमोत्तमभावेन विधामिहित-  
साधनस्यार्थमर्तनदुर्ज्ञे तथा निष्ठुराश्रीलतीतत्वादिवारुपादस्यविशेषदुर्ज्ञे तथा भुतानि-  
जनदेशकर्मशरीरपुत्रमाधुर्गार्थविशेषविशेषदुर्ज्ञे तस्मिन्मनोऽप्यवचदुर्ज्ञविषयिकाः स्मृतयो  
यद्यपि पञ्चःसहस्रचणकैः समुचितता अस्माभितु संप्रति तदुर्ध्वगतानिहप्रजाशिक्षका-  
मावाद् दृष्ट्वा ह्यवधिरागमिमां हृदिति न समुचितताः । स्मृतिच. II. p. 327. The  
words from भुतानिजन up to संप्रति occur also in sm. vi. p. 479, which winds up  
as 'संप्रति तदुर्ध्वगतानामावाद् ह्यवधिरागमिमां हृदिति न समुचितताः ( = १ : ) किमर्थमित्युपपन्नम्' ; यद्यपि वाक्यारम्भ-  
द्वयपारुष्ययोर्विशेषभेदान्नेपि दुर्ज्ञविशेषाः स्मर्तुमिदपदिष्टाः सन्ति तथापिदान्तिन्ने  
राजभिः प्रजाहोमप्रसङ्गेन तादृग्दुर्ज्ञं कर्तुमशक्यतादुष्टपुत्रोमानावेन निरर्थकह्यवधिरा-  
गमप्राप्तास्माभिः संहरिताः । ( सदनरत्न at the end of दुर्ज्ञपादस्य ).

225. Vide शास्त्रजालान् 14. 6. 6, for an abuse as to *varṇa* 'वासश्च मेधा-  
तिथिश्च काणाक्षस्तौ तं कर्त्तुं मेधातिथिराक्षौशद्वज्राङ्गणौमि शूद्राङ्गुन इति ।'

226. Compare sec. 499 of the Indian Penal Code, exception one, which  
provides that the mere truth of an imputation does not exonerate a man  
from the charge of defamation, unless the imputation is uttered for the  
public good.

227. शरीरगृहविक्षुब्धजनपदानां शरीरोपवादेन काणक्षजादिभिः सार्वे विषयो  
दुर्ज्ञः । मित्रयोपवादे पदपयो दुर्ज्ञः । शोभनाशिक्षेन इति काणक्षजादीनां स्तुतिनिन्दार्था  
द्वाद्दण्डो दुर्ज्ञः । अर्थशास्त्र III. 18.

imputation is false all provide for a fine double of that provided in case the imputation is true. Ironical praise of a man (such as describing one who is blind or one eye as one endowed with a beautiful eye) is made punishable by Kaut. (III. 18). To warn<sup>220</sup> a man against associating with a person who is guilty of a grave sin or of theft does not entail punishment if the truth of the imputation be established (Kat. 776). Acc. to Kaut. and Kat. (775) the king was to award only half the fine prescribed if the accused said 'what I uttered in abuse was done through ignorance, carelessness, rivalry or friendship; I shall not again do so'<sup>221</sup>. A person who abuses a king doing his duty was to have his tongue cut off or forfeited all his property (Nār. XVIII. 30, Yaj. II. 302). Āp. II. 10, 27, 14 prescribed for a sūdra that abused any one of the three higher castes leading a religious life the punishment of the cutting of the tongue<sup>222</sup>.

*Dandapārasya* (assault). Kaut. III. 19 begins his treatment of this topic by saying that it comprises touching, threatening to strike and actually striking another<sup>223</sup>. Nār. XVIII. 4 defines it as inflicting the limbs of another with the hand, foot, weapon or other means (such as stones) or defiling or causing pain by (bringing) ashes and similar substances in contact with another. The Mit. on Yaj. II. 212 explains that even causing injury to animals and trees would fall under this title. Nār. XVIII. 5-6 provide that assault may be of three kinds viz. mild, middling and highly punishable according as a person merely makes preparations to assault or attacks without any qualm or causes a wound and that this crime can further be divided into three kinds according as the object attacked is low in value or middling or high. A verse from the *Parīśiṣṭa* (quoted by Sm. C. II. p. 327 and V. P. p. 370) states 'whoever causes pain or draws blood, wounds, breaks, cuts off, pierces (the limbs or bodies) of living beings is guilty of *dandapārasya*'. According to Br. (S. B. E. vol. 33 p. 357 verse

220. पत्रं स्यात्पश्चात्तार्यं पतितस्तेन (पतितस्तेन ?) कीर्तयन् । वक्तव्यमात्रं न स्वास्तु दोषो पत्रं विनाशयेत् ॥ कात्या. (776) q. by स्मृतिच. II. p. 327, वि. र. p. 223. Compare exceptions 9 and 10 of sec. 499 of the I. P. C.

221. मोहात्प्रमादात्तद्वचन्तं शिरसा प्रोक्तं मयेति यः । नान्येनैव पुनरप्येव वृण्वार्थं तस्य क्षमयेत् ॥ कात्या. 775 q. by वि. र. p. 346, वि. चि. p. 70 (both ascribe to कात्या. and उद्गमस्मृ.). स्मृतिच. II. p. 327, श्र. म. 223, श्र. व. p. 384 ascribe to उद्गमस्मृ. alone. अनादमदुग्मेहद्विनिरर्पद्वेषाः । अर्थशास्त्र III. 18.

222. विद्वान्पण्डितं ब्रह्मरूपार्थं धार्मिकमाक्रोशतः । आप. घ. सू. II. 10, 27, 14.

223. वृण्वपादवर्षं स्वर्गोत्तममर्ह्यं क्षमयति । अर्थशास्त्र III. 19.



1) *daṇḍapāruseya*<sup>932</sup> consists in striking (a person) with the hand, with a stone, a club, ashes, mud, dust or a weapon. The Mit. on Yaj. II 212 following Nār. XVIII. 7-12 lays down certain propositions about both abuse and assault. A person who does not return abuse or does not assault when abused or assaulted, deserves to be commended; if he returns the abuse or assaults in return, the person who began the quarrel is to be dealt with more severely than the other. When two persons<sup>933</sup> attack each other and there are no means for finding who began the quarrel equal punishment is to be awarded to both; but when two quarrel he who began the quarrel or he who persists longer than the other is to be fined more than the other party and lastly if men of the lowest<sup>934</sup> castes such as *śvapāka*, *mūḍa*, *cāṇḍāla*, hunters, elephant riders, *vrātyas* and *dāsa*s (slaves) assault respectable men and *Ācāryas* then they are to be punished (whipped) by good men then and there, but if such punishment is not possible, then the king should award corporal punishment (of various kinds according to the nature of the crime) and should not take fines from them, since they are the foulest among men and their wealth also is foul. Kat. (783) and Br. (S. B. E. 33 p. 359 verse 15) are to the same effect. The several *smṛtis* lay down various punishments for various kinds of assaults but no useful purpose will be served by going into details. Kat.<sup>935</sup> (786) provides that just as in abuse punishments depend on the castes of the abuser and the abused so also in assaults higher punishment is to be awarded if the attacker is of a lower caste than the person attacked or lower punishment if the person attacked is of a lower caste. Manu VIII 286 and Uśanas<sup>936</sup> lay down that the punishment for the offence should be commensurate with

932. दण्डपापारुषेयैर्ममकर्मणोऽभिः । आपुषेयं गृहणं दण्डपापं वक्तव्यम् ॥ बृह. q. by वि. र. p. 259.

933. द्वयोः मूलतोर्दण्डः समोस्तु समः स्मृतः । आरम्भकोऽनुवर्गो च दण्डः स्यादधिकं दण्डम् ॥ बृह. q. by अपराज् p. 812, वि. र. p. 275.

934. अशुश्रूषणं दासानां म्लेच्छानां पापकारिणाम् । अतिलोमभृशानां तादृशं नार्थतो दण्डः ॥ कात्या. q. by अपराज् p. 813, वि. र. p. 273 ; अतिलोमभृशतां चान्यथा दुष्टाणां मलताः स्मृताः । बाह्यजातिक्रमे वक्ष्यते न दण्डस्या धनं कञ्चित् । वि. र. p. 277.

935. दण्डपापस्यै परैरेकाः अतिलोमभृशलोमताः । तथैव दण्डपापस्यै वारतां दण्डावकाशम् ॥ कात्या. 786, q. by वरा. म. III. p. 418, वि. र. 269.

936. यत्र नोभ्यतो दण्डः सर्वपापनास्तु म्लानमिति । तत्र कार्यं परिज्ञाय कर्तव्यं दण्डधारणम् । उशनस् q. by स्मृतिच. II. p. 328 (which explains कार्यं जानिषु पापान्तरेऽन्यादिते दुःखम्).

the pain or injury caused by the offender to a man or beast. A few examples may be set out. Probably the oldest reference to fines for assault in Sanskrit literature is contained in the Taittiriya Saṁhita<sup>937</sup> II. 6. 10. 2: 'He who threatens to strike a brāhmaṇa shall be fined with a hundred (cows or niṣkas ?), he who strikes a brāhmaṇa shall be fined with a thousand; he who draws blood from him shall not behold the *pāṭra* for as many years as there are particles of dust mixed with the blood that falls on them'. This passage is interpreted in Jai. III. 4. 17 as being a recommendatory injunction (*puruṣārtha*) to all at all times to desist from assaulting a brāhmaṇa. Gaut. (21. 20-22) and Manu XI. 206-207 appear to take the Tai. S. passage differently and refer the figures of 100 and 1000 to years. Kaut. III. 19 prescribes various fines for various kinds of assaults, Br. (S. B. E. 33 p. 357 verses 2, 3 and 7) says that if a person throws ashes or the like at another or beats him with the hand the fine should be one *māṣa*, but if he strikes with a brick, stone or stick the fine should be two *māṣakas*; this however applies when both are of the same caste, but if he assaults a woman who is another's wife or a person of a higher caste, the fine may be higher and higher. For one who bruises the skin of another or draws blood by assault the fine is one hundred *paṇas*, and for him who causes a wound by removing some flesh the fine is six *māṣakas* and he who causes breaking of bones should be banished (Manu VIII. 284 = Nār. XVIII. 29). Kāt. prescribes the highest amercement for cutting off the ear, the lip, the nose, the foot, the eye, the tongue, the penis, the hand, and the middle amercement for causing injury (or wounding). Gaut. XII. 1, Kaut. III. 19, Manu VIII.<sup>938</sup> 279, Yāj. II. 215, Br. provide the punishment of the cutting off that limb with which a *sūdra* strikes a person of the three higher castes. And the Mīt. on Yāj. II. 215 applies by analogy the same rule to a *vaiśya* striking a *kṣatriya*. Manu VIII. 280 extends the same punishment to a *sūdra* for

937. सो ब्राह्मणायापयुरास्ते व शतेन पातयान्, सो विद्वन्वं सहस्रेण पातयान्, सो लोहितं करणायस्वकस्य पक्ष्मं संयुह्यतावतः संवसराय विद्वर्त्तनं न यजानादिति । तस्माद् ब्राह्मणाय आपयुरेत न निहस्ववाञ्छ लोहितं कुपान् । ते. सं. II. 6. 10. 2.

938. अथो च सर्वपरिव्रजान् । जै. III. 4. 17. शब्दस्य conclusion is: सर्वान्धरस्य ब्राह्मणस्पर्शं प्रतिषेध उक्तः, न दूर्जपूर्णमासगतैरेव भाष्योक्त्यादि कर्तव्यमितेति ।

939. सूद्रो द्विजातीनामिहस्ववाभिहाय च वाग्दण्डपादस्वस्वामिहोत्थो येनोपद-  
स्यात् । नौ. XII. 1; सूद्रो येनाङ्गेन ब्राह्मणमभिहस्ववाचक्ष्वर्यं वेदयेत् । अथर्पूर्णं निषेधः ।  
सर्वोपापदण्डः । अथंशब्दः III. 19; येनाङ्गेन द्विजातीनां सूद्रः मरते इति । उक्तस्य वस्तु-  
कारस्य तस्मिन्मोक्षमासमम् ॥ बृह. प. by सूतिच. II. p. 328.



merely raising the hand or a club to strike one of a higher caste. Manu VIII. 281-283 (= Nar. XVIII. 26-28) provide that a person of a low caste defiantly sitting on the same seat with one of a higher caste was to be first branded on the waist and then banished or his hips were to be gashed (in such a way that he might not die), that a śūdra defiantly spitting on the body of a brāhmaṇa had his lips cut off or a śūdra voiding urine or faeces on a brāhmaṇa had those offending limbs cut off, or a śūdra defiantly seizing a brāhmaṇa by the hair or the feet or beard or neck or testicles would have both his hands cut off. If several conspire and strike a person who is alone, each one was to be sentenced to twice the punishment prescribed for the offence (Yaj. II. 221, Kauṭ. III. 19, Viṣṇu Dh. S. V. 73). Kauṭ. III. 19, Manu VIII. 287, Yaj. II. 222, Br. Kāt. 787, Viṣṇu Dh. S. V. 75-76 provide that the king should make an offender pay a fine and also the expenses of medical treatment and diet till the wound is healed up and the person attacked is able to do his usual work (vide note 613 above). For mischief to property<sup>940</sup> and for killing or maiming animals, Kauṭ., Manu, Yājñavalkya and others provide various fines. For example, Kauṭ. III. 19 prescribes that when property of small value is destroyed by a man he should be punished with fine equal to the value of the article and should be made to restore the article or its value to the owner; but in the case of articles of substantial value the fine is double of the value. Manu VIII. 288 is of similar import. Yaj. II. 223 provides varying fines if a person wrongfully causes damage to a wall by knocking it (with a club), or pierces it or divides it into two or demolishes it and makes the offender pay to the owner the cost of restoring it. Manu. VIII. 296-298, Yaj. II. 225-226 prescribe fines for causing death or injury to animals of small value (such as goats) and big animals like elephants, horses and cows. Yaj. II. 227-229, Kauṭ. III. 19, and Kāt. 793 provide fines for causing loss by injuring or felling trees, shrubs and creepers. Yaj. II. 214 holds<sup>942</sup> that if a person throws mud,

940. महाजनस्यैकं पशोः अथैकं क्षिप्रणी दण्डः । अर्थशास्त्र III. 19.

941. यथापि जलशुक्लं दद्यात्तत्परिणामकम् । तस्यास्यैकं मूर्ध्नि वा दद्यादिवज्रवीर्यम् । # क्षात्रात्. 793 q. by परा. मा. III. p. 423. वि. र. 284; वनस्पतीनां सर्वेषामुपभोगो यथा यथा । तस्य तस्य दणः कार्षीं क्षिप्रवामिनि धारणा # मनु VIII. 283. This last is cited as क्षात्रापापना in वि. र. p. 284.

942. हनिष्येत्पशुमो गोवमद्विद्विनिरद्वयम् । वा. II. 214 ; हनिष्येत्पशुदण्डः परकीर्तु क्षिप्रुणाः । तस्य दण्डमेतद्विनिरद्वयम् । अर्थशास्त्र III. 19.

dust or saliva or filthy things on another or strikes with his feet, he should not be fined if he is under the influence of intoxicants at the time or is not in his right mind or does it through mistake, while Kaut. III. 19 prescribes half of the usual fine in such cases.

An important question is how far the right of private defence of person or property was recognised by the dharmaśāstra works. This subject has partly been dealt with in H. of Dh. vol. II, pp. 148-151 in connection with an *ātātāyin* (a desperate man) who is an incendiary or a poisoner or is armed with a weapon, is a robber, one carrying away another's wife or seizing by force (a field). Although there is great diversity of views about killing a brāhmaṇa *ātātāyin*, there is no difference of opinion as to repelling with force culminating even in death an *ātātāyin* of any other caste. Gaut. VII. 25 allows even a brāhmaṇa to arm himself when his life is in danger.<sup>943</sup> Band. Dh. S. II.<sup>944</sup> 2. 80, Manu VIII. 348-349 lay down that brāhmaṇas and vaiśyas may oppose with force when they are prevented from doing their religious duties by felons or when there are disturbances caused by invasion or the like, for saving their own lives, for preventing the seizure of their cows or other wealth or for protecting women or brāhmaṇas. The Mīl.<sup>945</sup> on Yāj. II. 286 remarks that these rules of Manu are applicable when there is no time to report to the king or when delay in opposing violence will mean loss or ruin. According to Kāt.<sup>946</sup> (800) no blame attaches to a man who kills wicked men that are about to kill another, but when they have desisted from their attempt, they should be arrested and not killed. Aparārka (on Yāj. III. 227) remarks that persons are to be regarded as *ātātāyin* while they are about to set fire or to kill or they are in the act of setting fire or killing and the like, that where it is not possible to prevent them from doing what

943. मणसंशये बाह्यजोषि शस्त्रमाद्यूत । शौ. VII. 25.

944. मन्वायै नाह्नयार्थे वा त्रयानां वापि सङ्करे । युद्धीयानां विपत्तिनां शस्त्रं धर्मवपेक्षया ॥ शौ. च. II. 2. 80 ; शस्त्रं द्विजातिभिर्मात्रं धर्मो वप्रोपहरयते । मनु VIII. 348, which the महानरान् (ma) explains 'धर्मरक्षणार्थादिकस्य पत्रं देवे काले वा भेदमतेदनादिनापक-  
यते तत्र । ... तथा दक्षिणानां सङ्करे गोघ्नहणनिमित्तकं युद्धे । श्रीविष्णुसुषमा दुर्बलद्विजाति-  
कारणे पराद्विजोत्थनं न दुष्यति ।'

945. यदा तु राजा निवेदनेन कातयितुमनेन कार्याणिप्राप्तः सदा तदा स्वयमेव जारादी-  
न-पाद । शस्त्रं द्विजातिभिर्मात्रं धर्मो वप्रोपहरयते । इति । मिता. on वा. II. 286.

946. उद्यमानां तु पापानां प्रत्युद्दिष्टो न विद्यते । निवृत्तानां यदाहमादृशस्य न वधः  
समुक्तः ॥ कात्या. 300 q. by. सुविच. II, p. 315.



they intend to do except by killing them there only the texts allow killing; but that where it is possible to prevent them by merely wounding them with a weapon or stick, killing them would be an offence.<sup>947</sup> Medhātithi<sup>948</sup> on Manu VIII. 348 differs from this and allows the killing of a desperado even after he has carried out his purpose and not only when he is about to carry it out or is in the act of carrying it out. The view of the Mlt. on Yāj. II. 21 is that one has a right to oppose and kill another in self-defence, in defence of women and other weak people, who cannot defend themselves against a murderous or violent attack and that even if a wrongdoer of the brāhmaṇa caste was killed in the exercise of such right there is no punishment at the hands of the king and the *prāyaścitta* (for killing a brāhmaṇa) is a light one. Similarly a man can kill with impunity animals having claws, horns or fangs or horses or elephants if they attack a person (Kāt. 805 q. by Sm. C. II. p. 316).

947. अथ च वर्तमाद्यिदानीदिवापार एवततापि न कथ्यन्ते । तद्व्यापारनिवारणे च यत्र यथमन्तरेण न सम्भवति तत्रैव तद्व्यापारः । यत्र तु बुद्धयश्चादिव्यापारमावेष्टेयं शक्यं निवारयितुं तत्र तु तद्व्यापारो दोषनिमित्तमेव । अथ एवमेकं बृहस्पतिना-आकुरुतु नमोऽशं-स्ताचितः प्रतिपादयन्-दृष्टव्ये । अपराकं p. 1043. For the right of private defence of person and property compare the above dicta with sections 99 to 103 of the Indian Penal Code.

948a. अपातामिति वचनादाप्तकालो हन्तुर्नभिधायन् दारान् वा तिदीर्घं हन्तव्यः कुते तु दोषे किमप्यन्तरिपत्तित्वेनोक्तं इति ननु तदपुनः यतः यत्कालमप्यशं चेति वक्ष्यते । सनानो द्यौतं करिष्यन् कुतश्चैव बुधः ( ! बुधः ) वेदिति । तस्मादापान्तमित्यनुवादः कर्तुमागतं कुला वागमिति । आतापित्वाचामो हन्ति स च कुतश्चैन आतापित्वमुपैति ( ! न च कुतश्च आतापित्वमुपैति ) । यथा. ०० मनु VIII. 348 : अथ ब्राह्मणादय आतापितश्च आतापित्वाचार्यं हिमानभिसन्धिना नितार्यमाणाः समादाद्यदि विपद्येरन्तत्र सद्युपायश्चितं राज-दुष्टान्नाशयेति निश्चयः । मित्ता. ०० या. II. 21. The *समुद्ररत्न* quotes both these views and also that of *स्मृतिच.* II, p. 315.

## CHAPTER XXIV

### STEYA (theft).

In the Rg. there is frequent mention of *taskara*, *stena* and *tāyu*. In Rg. VI. 28. 3 the sage<sup>948</sup> says 'may the cows not disappear from us, may a thief not injure them'. In Rg. VIII. 29. 6 it is said 'Pūṣan guards the ways and knows of concealed treasures as a thief does'. From Rg. X. 4. 6 it appears that thieves were desperate and bound people with ropes and (from Rg. I. 191. 5) that thieves (*taskarus*) appeared at night. *Tāyu* (thief) occurs in Rg. I. 50. 2, IV. 38. 5, VI. 12. 5 and is an Indo-Iranian word. The word 'stena' occurs in Rg. VI. 28. 7 and means 'one who is a cattle-lifter'. Rg. VIII. 67. 14 indicates that a *stena* was bound with ropes (when caught). In Rg. VII. 55. 3 the dog is asked to run after a *stena* and a *taskara*, the first being probably a thief (who secretly carries away property) and the second a thief who openly carries it away. In the Vaj. <sup>949</sup>S. XI. 79 (= Tai. S. IV. 1. 10. 2) we have the *malimtu* in addition to *stena* and *taskaru*. Atharvaveda IV. 3 contains charms against wolves, tigers and thieves (*taskarus*).

*Steja* is distinguished from *sāhasa* in Manu VIII. 332, Kauṭ. III. 17, Nār. XVII. 12 and other works as stated under *sāhasa* below. Kāṭ. 810 defines<sup>949</sup> it as 'depriving a man of his wealth either clandestinely or openly and either by night or by day'. Nār. XVII. 17 defines it as 'deprivation of wealth by various means from people that are asleep, careless or intoxicated'. It may be of three kinds according to the value of the thing stolen viz. trifling (when earthen-ware, seats, coats, wood, hides, grass, beans in pods or cooked food is stolen) or middling (when the theft relates to clothes except silken

948. न वा नशन्ति न दूयन्ति तस्करो वासामानिधो व्यधिरा दूयन्ति । अ. VI. 28. 3; पथ एकः पीताय तस्करो ययौ एष वेदु निधीनाम् ॥ अ. VIII. 29. 6; तनूयमेव तस्करो वनसु राजानिर्दुःखभिरुपपीताम् । अ. X. 4. 6 (explained in निहङ्ग III. 14).

949. ये जनेषु मलिम्लवः स्तेनामलसकरा वने । ये कक्षेष्वापायपलांस्ते दूयन्ति जग्मवो ॥ वाज. सं. XI. 79. The com. on Tai. S. explains: 'स्तेनाः दूयन्तीराः तस्करोः मलम्लवोः अलिम्लवो निर्भयो जनेषु बन्धिकाः मलिम्लवः'.

948b. पञ्चदश वा यत्तद्वै वा विज्ञानमधवा दिना । पापराद्व्यहर्णे स्तेवं तपस्विकीर्तिनम् ॥ कात्या. 810 q. by दाशमान. VI. 9, p. 224.



ones, animals except cows and bulls, metals except gold, rice and barley), grave or high (when gold, jewels, silken cloth, women, men, cattle, elephants, horses and the wealth of brāhmanas or temples is stolen). Vide Nār. XVII. 13-16 and Yāj. II. 275. Thieves are either *prakāśa* (open or patent) or *ajrakāśa* (secret) acc. to Manu IX. 256, Br.<sup>949</sup> (S. B. E. 33 p. 359 v. 2). Acc. to Manu IX. 258-260, Nār. (parīśista 2-3) and Br. (S. B. E. 33 p. 360 verses 3-4) patent thieves are traders who employ false weights and balances, gamblers, quacks, bribers of *sabhyas*, prostitutes, those who profess to arbitrate, those who manufacture imitation articles, those who subsist by prognosticating good fortune or portents or by magic or palmistry, false witnesses &c. Manu (IX. 261-266) states that in order to find out such thieves the king should employ spies in various disguises at various places such as meeting halls, refreshment rooms, brothels, wineshops, theatres &c. The concealed thieves are those who move about with tools for house-breaking without being observed and whose residence is not known; they are principally<sup>950</sup> of nine kinds viz. one who quietly relieves a man of his money when the latter is attending to something else, a house-breaker, a highway robber (who robs travellers), a cut-purse, one who steals (or kidnaps) a woman or a man, cattle, horses and other animals. Yāj. II. 266-268 and Nār. (parīśista 9-12) indicate the various ways in which thieves may be detected and caught viz. by the (police) officers recovering a part of the booty from a man or by tracing foot-steps, or by seizing one who has been often found to be a thief, or by finding out that the man suspected cannot state his place of residence; and they recommend that on suspicion others may be caught, if on being questioned they attempt to conceal their caste or name or if they are found addicted to gambling, wine and women or if their mouth becomes dry or their voice changes or if they spend lavishly though they have no ostensible means of earning, or those who sell lost or second-hand goods or who move about in disguise or who are found making inquiries about others' houses

949. अकाशाश्वाकाशाश्च द्विविधास्तस्कराः स्तूतः । यज्ञानामर्थमावाप्तिः यन्निवाले सप्तमः ॥ बृह. १. by स्तूतिच. II. p. 317, स्व. न. p. 386.

950. उत्सृष्टकाः सन्निधेस्तः यान्तुद्वयग्नियेवकाः । श्रीगोभिलपुस्तके श्रीते नव-विधः स्तूतः ॥ व्यास १. by स्तूतिच. II. p. 318, स्व. न. p. 387.

or wealth. The Mīl on Yaj.<sup>951</sup> II. 268 quotes Nār. and gives the warning that the king must carefully examine whether the man caught is really the thief and should not convict merely on suspicion, since even an innocent man may have stolen property near him or betray some of the signs noted above. When property alleged to be stolen is found with a man, it may be that the articles came to his hands from another's hand or he may have taken it up when it lay unclaimed on the ground or he may have taken it as a thief; liars often have the appearance of honest men and *vice versa* (Nār. I. 71)<sup>952</sup>. Nārada's dictum (I. 42) that one who is not a thief may be held to be a thief as in the case of Māṇḍavya has already been quoted above (p. 357n. 549). Vide Manu IX. 270 (= Matsya 227, 166) cited on p. 355 above. When a person is seized on suspicion of being a thief he could not be acquitted on his mere denial of the offence. He had to prove innocence by ordinary evidence (such as proof that he was elsewhere when the theft was committed) or ordeals (Yaj. II. 269). The general rule about the punishment of patent thieves was that the punishment was to be proportionate to the lightness or gravity of the crime and not to their wealth (Vyāsa)<sup>953</sup>. Br. (S. B. E. 33 p. 361 verses 10 ff) quoted in Par. M. III. pp. 439-440 and V. P. pp. 387-88 prescribes various punishments for particular kinds of patent thieves e. g. sabhyas giving wrong decisions (for bribes) or those who deceive by betraying the trust imposed in them are to be banished. Manu IX. 292 (= Matsya 227, 184-185) holds that the goldsmith is the worst of all deceitful persons (*kantakas*) and if he is found committing fraud his limbs should be cut off bit by bit.

As regards the concealed thieves the texts lay down special rules. Nār. XVII. 21 extends to theft of the three kinds mentioned above the same punishments that are awarded in the three kinds of *sāhasa*. Manu VIII. 323 prescribes death sentence for kidnapping men of good family and particularly women

951. अन्वहस्तापरिग्रहकामादुद्धृतं युवि। चौरैश्च वा परिग्रहितं लोपयत्तं वानापरिग्रहं ॥  
काश्या. acc. to अपराधे p. 541, वि. इ. p. 337, मिता. on वा. II. 268 and परा. मा. III. p. 437 ascribe it to नारदः. The मिता. remarks: न हुनल्लिङ्गदर्शननाडेण चौरनिर्णयं कुर्वन्त। अचौररपि लोपवादिचौरैर्लिङ्गसम्बन्धसम्भवात्.

952. असन्धः सत्यसंज्ञायाः सत्याश्वासवर्त्मिनाः। दुरागते विविधा भावार्तभ्याश्चक्रे परीक्षणम् ॥ नारद I. 71; in the शान्तिपर्व 111. 65-66 this very verse occurs with the variation that सन्ध and असन्ध are substituted for सत्य and असत्य.

953. नैममाद्या धुरियता दण्डना दोषास्तुल्यतः। पद्या ते न निवर्तन्ते निहन्ति सन्धे तथा ॥  
भ्यास q. by रघुतिच. II. p. 317, ख. 2, p. 387.



and for theft of costly jewels; while Vyāsa prescribes death by burning on red-hot iron bed for kidnapping women and mutilation of hands and feet for kidnapping a man. Yāj. II. 273 provides impalement for those who confine others as captives, for those who steal horses and elephants and who strike others with violence, while Manu IX. 280 prescribes death for those who break royal store-houses and armoury, the inner shrine in a temple and who steal horses, chariots and elephants. For him who commits theft by housebreaking at night Manu (IX. 276) and Br. (S. B. E. 33 p. 361, verse 17) provide impalement<sup>934</sup> after cutting off his hands. Yāj. II. 274, Manu IX. 277, Viṣṇu Dh. 8. V. 136 prescribe for the cut-purse the punishment of the cutting of the thumb and index finger for the first offence, the cutting of the hand and foot if it is the second offence and death if he repeats the same offence a third time. Not only was the thief made to undergo punishment but he was also liable to make good the loss of property to the person robbed (Manu VIII. 320, Yāj. II. 270, Viṣṇu Dh. 8. V. 89, Nār. parīśiṣṭa 21). According to Nār. (parīśiṣṭa 22-24) for thefts of articles of small value the fine was five times their price, while Manu (VIII. 326-329) said it was twice as much as the price. Gaut. XII. 12-14,<sup>935</sup> Manu VIII. 337-338, Nār. (parīśiṣṭa 51-52) lay down that the fine for theft is higher in the case of the higher castes i. e. if the śūdra thief is fined eight times of the value of the article stolen, the vaiśya, kṣatriya and brāhmana thieves were respectively fined 16, 32 and 64 times the price of the article, as each is deemed to know better owing to his higher status and culture. Manu VIII. 380 lays down the general rule that a brāhmana offender was not to be killed whatever the offence might be but he was to be banished from the country allowing him to take with him all his wealth. But there were other provisions and exceptions also. Kāś.<sup>936</sup> (823) states that

934. मन्विच्छेदकृतौ ज्ञात्वा कुलमावातेत्यहुः । बृह. ५. by ५५. २. p. 388.

935. अथापार्थं स्वपक्षिण्यं यत्तु यः । द्विगुणोत्तरार्णवरेणो यतिर्गण्यः । निबुधोऽतिक्रमे दण्डयुक्तस्य । नी. XII. 12-14.

936. नागवाः सच गृध्राः सर्पोऽनां यवासनम् । गौतमानामनिधेः पक्षाण्युच्छेदादि-  
महितम् । सतीश्चमहोदं वा हन्यामिवाहसम् । संपृष्टं चिह्नमावेद्य सर्वस्वैर्विपरीजयेत् ।  
अथःसन्धानमुत्तमं सन्दुग्धं वा बलान्निताः । कुट्टः कर्मोपि स्वपनेरा सुयोरिति कौशिकः ॥ कात्या-  
823-825 ५. by वि. र. p. 332, वि. वि. p. 23, अपरांशे p. 849 (last two verses).  
अथ कात्यायनपात्रे दुल्लभान्वायवताः यवासनं, तच्छुण्णवत् यवताः संप्रेक्ष्यरणे, निर्धनस्य तु  
तद्योनिपश्च यवनादिकमग्निनेत्रं जाल्प्यनिधेयं येति । वि. र. p. 332; अपरांशे reads  
यवनादिकमग्निनेत्रं, which seems to mean that his guilt and the signs whereby  
it was determined should be proclaimed to the public.

the school of the Mānavas declared that thieves caught with the stolen things on them should be at once banished but that the school of Gautama disapproved of this mode, since it is condemned because it entails loss (reduction) of people in the country. The V. R. p. 332 explains this verse as referring to a learned brāhmana. Two more verses of Kat. (824-825) are quoted by V. R. p. 332 and V. C. p. 92 the first of which provides that a brāhmana who is not learned whether caught with booty or not should be branded (with the appropriate signs) and deprived of all his property, provided his guilt is brought home with certainty and the second provides that a brāhmana thief who is neither learned nor rich but is strongly built should be kept under guard with fetters on his feet, should be fed on meagre food and made to do hard labour for the king till his death. Gant. XII. 46-48, Nar. (parisista 13-14), Manu IX, 271 and 278, Kat. (827) hold that the punishment for those who knowingly give food, fire (when they feel cold), water or asylum to thieves or who receive or purchase stolen property or who conceal them are to be punished like the thieves themselves.<sup>957</sup> Yāj. II. 216 proscribes the highest amercement for any one who knowingly gives help to a thief or murderer in the above ways or by directions or by supplying tools or money wherewith to go to a place for committing the offence.

In certain cases a person could take without being liable to be punished as a thief certain things belonging to another even if he had not the latter's permission. Gant. XII.<sup>958</sup> 25, Manu VIII. 339 (= Matsya 227. 112-113), Yāj. II. 166 allow a person of the three higher castes to take grass, fuel-sticks, flowers of trees and plants for feeding cows and for the worship of fire from any place as if they belonged to himself and also fruits of trees that were not enclosed. In such cases he would not be liable to a fine nor does he incur sin (Kullūka on Manu VIII. 339). A smṛti passage stating that if a man takes

957. Compare sec. 212 (about harbouring an offender) and 411 (on receiving stolen property) of the L. P. C.

958. मोक्षधर्मसूत्रमेवादिद्वयवर्तमानं च दुष्कृतिं स्वयदादनीत फलानि चापरि-  
वृत्तानाम् । नार. XII. 25; अपरार्क p. 773 remarks that this is so only when there  
is difficulty in getting these (आपादि.) दत्तुमशक्यं-तुल्यं वा यदि वा काले पुष्पं वा  
यदि वा फलम् । अमापृच्छन्ति युद्धानो हस्तव्येदनमस्ति । इति-तद् द्विजव्यतिरिक्तविषयमनाप-  
द्विष्ये वा यथाविश्ववर्तिरिक्तविषयं वेति । मिता. on Yāj. II. 166; अपरार्क p. 774 says  
तद्व्यापद्वयमुद्गादिष्वप्यम्'.



grass or fuel or flowers or fruits without permission deserves to have his hand cut off is explained by the Mit. ( on Yāj. 166 ), Aparārka p. 774 and others as meant to apply to persons other than *dojas* or as meant to refer to a case where they are taken by a person who has really no difficulty in securing these or where these are not taken for the use of cows or for worship. This matter had been a subject of discussion from ancient times. Āp. Dh. S.<sup>939</sup> ( 1, 10, 28, 1-5 ) contains a discussion from which it appears that Kautsa, Hārta, Kāva and Puṣkarasādi were of the opinion that whatever ( however trifling or in whatever circumstances ) a man took without the consent of the owner, he became a thief; that Vāgyāyani held that there were exceptions to this rule viz. that owners should not forbid the taking ( of a small quantity of ) grain in pods ( such as *mudga* or *māṇa* ) or grass for bulls yoked to carts, but that if large quantities even of these were taken there would be theft. Śānti 165. 11-13, Manu XI 16-18 and Yāj. III. 43 state that when a brāhmaṇa or other person has fasted for three days because he has had no grain with him, he may on the 4th day take grain for one day's meal from anywhere he can get, whether from a threshing floor or from a field or a house, and that if the owner questioned he should declare to him the reason, but a person of a lower caste should not in this way take grain belonging to one of a higher caste, unless the latter pursues a sinful course or does not perform the duties of his caste. Vyāsa quoted by Sm. C. I. p. 175 allows a man to commit even theft, when he is in distress for food, first from a person of a lower caste, then from one of the same caste and then from one of a higher caste. Manu VIII. 341 ( = Matsya 327. 110, 114 ), Nār. ( prakṛpaka 39 ), Śaṅkha and Kat. ( 822A ) state that a traveller whose food has run out may take from another's land without being liable to punishment two sugarcane stalks, two *mūlakas* ( esculent roots ), two cucumbers or melons, five mangoes or pomegranate fruit

939. यथा कथा च परपरिग्रहमभिमन्यते स्तेनो ह भवतीति कौत्सहारीतौ तथा काण्व-  
पुष्करसादीः सम्पत्पदादाः परपरिग्रहेष्विति वाग्ययानि । शम्भोषा दुग्धपाशौ न स्वामिनः  
पतिषेधवन्ति । अतिव्यवहारो वृद्धो भवति । सर्वत्रास्तुमतिपूर्वमिति हारीतः । अप. ध. सू. I. 10,  
28. 1-5.

940. आपस्तु विहितं स्तेन्यं विशिष्टमस्मीनतः । शीतान्नद्वैतमादौ स्वात्मनाद्वा तदुन्मत्तरम् ।  
स्वामि q. by स्मृतिच. I. p. 175 ; शान्तिपर्व 141, 395 आपस्तु ..... विशिष्टं च सहीयसः ।  
विशेषं नापरादायै कर्तव्यमिति विश्वध. ।

and a handful of dates and of such corn as rice, wheat, gram &c.<sup>961</sup>

*Sāhasa* (crimes of violence). Manu VIII. 332, Kaut. III. 17, Nār. XVII. 1, Yaj. II. 230, Kat. (795-796) define *sāhasa*<sup>962</sup> as any act which is done with violence in defiance of or in spite of the presence of royal officers or guards or people. The word *sāhasa* is a derivative from 'sahas' meaning 'force' (Nār. XVII. 1). Sometimes it is distinguished from theft (as in Manu VIII. 332, Kaut. III. 17 and Nār. XVII. 12) by saying that theft consists in depriving a person of his wealth stealthily (without force), while in *sāhasa* there is the use of force or violence<sup>963</sup>. Nār. XVII. 2 and Br. (S. B. E. vol. 33 p. 359 verse 1) state that *sāhasa*<sup>964</sup> is of four kinds viz. manslaughter, theft, violence to the wives of others, and the two kinds of *pārasya* (treated as one-head). Although these topics can be comprehended under *sāhasa*, they are generally dealt with separately in the smṛtis and digests as a matter of convenience and in order to provide heavier punishment for crimes of violence<sup>965</sup>, since a man guilty of a crime of violence is a worse sinner than one guilty of abuse, theft or assault (Manu VIII. 345 and Mit. on Yaj. II. 230) and Manu VIII. 244 enjoins upon the king not to tolerate for a moment a man guilty of violence. The

961. तिलद्वंद्वमाषयवगोधुमादीनां सप्तमुष्टिग्रहणेषु न दोषः अधिकानाम् । शङ्ख प. by स्मृतिच. I. p. 176; यद्यपे वाक्ये हे तु पञ्चासं पञ्चद्वयानम् । चर्द्धवत्प्रादीनां मुष्टिं पृथक् दृश्यते । बृह. and काश. scc. to yaj. r. p. 320, चणकटीतिगोधूमवनां मुद्रुमापदोः । अभिविद्धैर्गोतित्थो मुष्टिरिकः पथि रिपतेः ॥ प. by मित. on वा. II. 275.

962. स्यान्साहसं त्वत्प्राप्तं यस्मै कर्म वक्तव्यम् । निरन्वये भवेत्तेषां कृत्वापवचने च यत् ॥ मनु. VIII. 332 : साहसमन्वयवत् यस्मैकर्म । निरन्वये स्तेपमप्यवचने च । अर्थशास्त्र III. 17 : सहसा कियते कर्म वक्तव्यद्वयवर्तिः । तत्साहसमिति योक्तं सहो वलमिहोच्यते ॥ वारद XVII. 1. सहसा प्राप्तं कर्म तत्साहसमुदाहृतम् । साधनस्यप्राप्तो यः यस्मात् हरणं च यत् । साहसं च भवेद्देवं लोकमुक्तं विनिश्चये ॥ काश. 295-296 प. by स. नि. pp. 451, 457, स्मृतिच. II. p. 316 and वि. र. p. 287 [the last two quote 796 only]. स्मृतिच. II. 316 explains: अन्वयो रक्षणकालक्रमप्राप्तपालकनरैरन्वयैः, तस्मिन्मति योऽप्यहारः स साहसोऽप्यहारः.

963. तस्यैव भेदः स्तेपे स्याद्विशेषतस्तत्र दृश्यते । आधि साहसमाकम्प स्तेपमाधि-भूलेन तु ॥ वारद XVII. 12, स्व. प. p. 385 explains: आधिः पक्षा यत्नापहरणादि-द्वारा आकम्प यस्मात् परस्व किंपमाणः क्रेशः साहसरूपे स्तेपम् । एतेन किंपमाणः आधिः केवलस्तेपमिवयोः.

964. मनुष्यमारणं चौर्यं परद्वाराभिनिर्गमम् । पादपशुभयं चेति साहसं स्यात्प्राप्तुर्विधम् । बृह. प. by स्मृतिच. II. p. 312, स्व. प. p. 392.

965. तदिदं साहसं चौर्यं वाद्व्यापयस्त्रीसंग्रहणेषु स्यात्सक्तमपि वत्तद्वर्णवृद्धो-पाथितो भिष्यते इति दण्डातिरेकायै दृष्टव्यमिहानम् । मित. on वा. II. 230.



V. May. (text p. 2) says that in differentiating *śloka* from *sāhasa* the maxim of 'cows' and 'bulls' is applicable<sup>966</sup>.

*Sāhasa* is divided by Nār. XVII. 3-6 and Br. (S. B. E. 33 p. 363 verse 24) into three varieties, viz. the lowest (destruction, abuse and trampling of fruits, roots, water, agricultural implements), middling (destruction &c. of clothes, food and drink, household utensils), highest (killing with weapons or poison, violence to others' wives and whatever causes pain to sentient beings). These three kinds are respectively punished with the three kinds of punishments described above (pp. 393-94). The principal crimes included under *sāhasa* in its narrow sense are homicide, rape and robbery. Rape will be dealt with under *śrīśāliniprahāṇa*. Br.<sup>967</sup> states the general rule that one guilty of murder by violence should be punished with death and not with fines (S. B. E. 33 p. 363 v. 29). To this the brāhmaṇa offender was an exception (Manu IX. 241), who was only to be banished. Manu IX. 242 introduces another exception viz. persons other than brāhmaṇas when guilty of the great sins (specified in IX. 235) through negligence should be only deprived of all their property but if they murder a man intentionally then only are they to be sentenced to death. Manu IX. 232 and Visua Dh. S. V. 9-11 provide the punishment of death for those who fabricate false royal edicts, or who tamper with the loyalty of the elements of the State or who kill women, children and brāhmaṇas. Baud. Dh. S. I. 10. 20-21, Br. and Vyāsa prescribe<sup>968</sup> that if a brāhmaṇa is killed by a kṣatriya, vaiśya or śūdra, the king should sentence

966. *सौम्यवृत्तव्यासपदप्रवृत्तव्यासोऽसाहसमेतद्विधेः कृष्यविद्वजो गोचलीवर्द्ध-  
न्यायेन*। च. मनुष्य p. 2. When a man says *śloka*-*आनीवर्द्धा* *वर्द्धिवर्द्धा* the separate mention of *baṭivardus* (bulls) that can be included under the word '*gāvaḥ*' is due to the fact that bulls, being more intractable than cows, special attention must be paid to manage them. अपराधे p. 1048 [on Yāj. III. 230] employs the same maxim in a similar connection '*गोचलीवर्द्धन्यायेन च सौम्यवृत्तव्यासपरिहारः*'.

967. साहसं पञ्चधा योके वधस्तत्राधिकः स्मृतः। तत्कारिणो नापेदमैः शाखा वधः। नपान्तः। बृह. प. by वि. वि. p. 105. The word '*vadha*' has two senses, (1) death and (2) corporal punishment. Here *vadha* means death.

968. अविद्यादीनां नाद्वयकारेण यः सर्वस्वरूपं च नेषानेन तुल्यपङ्कटद्वये वधायत्त-  
मनुसामन्द्यान्नेन जलपयेत्। अ. घ. 1. 10. 20-21; ज्ञानात्तु पातके सम्पन्नं सप्तहानं मया-  
न्ययम्। सम्पन्नित्ववर्धोपायिबोधेनकीर्तयः। व्यास प. by स्मृतिच. II. 112 and च. घ. p. 394; नकाशयत्तका ये तु तथा योषांभुवत्तकाः। ज्ञान्वा सम्पन्नं हुत्वा हन्त्याः विविधै-  
र्बधैः। बृह. प. by स्मृतिच. p. 312 and च. घ. p. 394. वि. वि. p. 105 reads राज्ञा सम्पन्नं हित्वा हन्त्याः and explains '*सम्पन्नः सङ्कष्टिदरभ्येदः, विविधो वधः अद्वया-  
स्तिपूर्विका जगज्जालिः*'.

the offender to death in various ways and confiscate all his property, but if a man kills another of his own caste or of a lower caste than the king may punish the offender with some punishment appropriate to the crime and the strength of the offender. In IV. 11 Kāṇḍ. provides sentences of death in various ways for murder following ancient śāstras, but remarks that if murderers have not been guilty of cruelty they should simply be sentenced to death without torture or the like<sup>969</sup>. One special rule deserves notice. Gaut. 22. 12, Āp. Dh. S. I. 9. 24 6-9, Manu XI 87, Vaa 20. 34, Yāj. III. 251 prescribe the same *prāyaścitta* for murdering a brāhmana woman who is an *ātreya* as for one who kills a brāhmana male. The different meanings of 'ātreya' given from ancient times are noted below<sup>970</sup>. Texts

969. एते शास्त्रवस्तुनाः क्रिषादृष्या म्हात्मनाम् । अक्रियतां तु पापानां धर्मः शुद्धयेषु स्मृतः ॥ अथोक्तम् IV. 11, last verse.

970. आत्रेयार्थम् । गौ. 22. 12 : आत्रेयी च सिपम् । आय. प. च. I. 9. 24. 9, आत्रेयी is variously explained. The word occurs as early as the Sat. Br. I. 4. 5, 13 where in explaining why the offerings to Prajāpati are made in a 'low tone' a legend about the goddess 'Vāc' is narrated and it is said that in having sexual intercourse with an ātreya, a man incurs sin' (तस्मादुपात्रेया पोषितैवरी). Here the word appears to mean a woman who is in her monthly illness. Vaa. (20. 33-36) defines ātreya as a woman who has taken the purificatory bath on the 4th day after her monthly illness begins and derives the word from अत्र 'आत्रेयी वरुणामो रजस्वलादुत्सृजतामात्रेयीमाहुः । अत्र दोषवृत्तये भवतीति । Vasiṣṭha either cites or summarises a Vedic passage (as stated by Viśvarūpa) which means 'here (i. e. in the womb of this woman) a child is to come'. In SRE vol. 14 p. 107 the same is translated as 'if the husband approaches her at that (time) he will have offspring'. But this is not correct. 'Esyat' qualifies 'apatyam' and is not in the masculine. Vaa. derives the word from अत्र and the root वृ. Viṣṇu Dh. S. 36.1 and 30.9 appear to hold that ātreya means a woman of the Atri-gotra. Haradatta on both Gaut. and Āp. explains ātreya as Vasiṣṭha does and states that others interpreted it as 'अक्रियता'; on Ya. III. 251 (तस्मात्रेयिनिवृत्तः) निबन्धय explains आत्रेयी as a woman within 16 days from the beginning of the monthly illness and quotes वसिष्ठ 20.36 and also says 'आत्रेयी अक्रियोवा वर्णपति । तदपि युक्तमेव । तथा चान्नाया ततोऽपि सम्बद्धैरुत्सृज्या तस्मादुपात्रेया पोषितैवरीतिनामाहुः । तेनोक्तं सम्बन्धकारुण्येनैव ।'. From Sabara on Jal. VI. 1. 7 it appears that some derived the word as 'अत्र कुसवस्या विद्यत इपात्रेयी', while Sabara himself preferred the meaning 'अक्रियोवा' and regarded the prohibition to kill an ātreya as simply meant for pointing that gotra 'तथा गोत्रपक्षेनार्थ आत्रेया अपमहुरेतेनम् । न चापक्षस्या आत्रेयी । गोत्रे व्यक्तम् । न हि अत्रोपादृश्यं तद्विदुः उपपन्नम् । सप्तर्षीनां हि तद्विदुः उपपन्नम् । न च अत्रोपादृश्यं सामर्थ्यमस्ति' (on Jal. VI. 1. 9), but quoted by Pat. Br. II. 1 p. 103 gives two meanings 'जग्मवमृति संस्कारो मरुहता ब्रह्मचर्यया । यमिनी वाय वा वा स्वाध्यामात्रेयी विनिर्दिशत ॥'. The अमरकोश gives आत्रेयी as a synonym of रजस्वला.



like Āp. I. 9. 24. 1-5, Gaut. XXII prescribe different *prāyaścittas* for murder depending upon the castes and sexes of the murderer and the murdered. These will be briefly dealt with under *prāyaścitta* later on. In certain cases acc. to Manu VIII. 291-292, Yāj. II. 298-299, Kaut. IV. 13, though death or injury to persons or loss of property results, no punishment was prescribed viz. when the nose-string of bulls yoked to a cart snaps, when the yoke breaks, when the cart swerves on one side owing to the unevenness of the ground, when the axle or wheel breaks or when the leather thongs with which the several parts of the cart are tied give way, or when the rope cast round the necks of bulls or the reins break or when in spite of the driver loudly calling upon a person to move aside from the way an accident occurs. But Manu VIII. 293, 294 (= Matsya 227. 95-96) provide that where through the want of skill of the driver knowingly engaged by a master the cart is overturned and injury is caused, the master should be fined 200 *paṇas*, but if the driver employed be known to be skilful, then when injury is caused the driver should be fined (and not the employer). Further if the driver, though seeing that the road is blocked by cattle or other carts, rashly drives and kills men and animals he should be punished (Manu VIII. 295). It is stated by Nār. (*pārusya* 32, S. B. E. vol. 33 p. 212) that the father is not liable for his son's offence, nor is the owner of a horse, dog or ape liable to punishment (for injury caused by any of these) provided they are not set up (to do harm) by the owner. If a driver kills a man by rash or negligent driving he is to be punished like a thief: if he kills any one of the larger animals (such as a cow, a horse, a camel or elephant) the punishment would be half of the preceding; if he kills one of the inferior animals, the fine would be two hundred. Kaut. III. 19, Manu (VIII. 285), Yāj. II. 227-229 and Viṣṇu Dh. S. V. 55-59 prescribe graduated fines for the destruction of trees, plants and branches, flowers and fruits according to their usefulness and sanctity. The smṛtis made a distinction as regards punishments between crimes of violence and crimes due to negligence or mistake. For example, Manu VIII. 264 (= Matsya 227. 30) prescribes a fine of 500 *paṇas* for depriving a man of his house, garden or field by threats of violence, but only prescribes a fine of two hundred if a man deprives another of his house &c. by mistake.

Various rules were laid down about inciters or abettors. Yaj. II. 231 and Kaut.<sup>971</sup> III. 17 prescribe for the man who incites another to crimes of violence double the punishment to be inflicted on the perpetrator himself and four times for one who incites another by assuring him 'I shall give as much money as will be required'. Kat. (798) and Br.<sup>972</sup> (S. B. E. 33 p. 363 verse 31) prescribe that if several violently beat a man to death, he who gives the fatal blow on a vital part is declared to be the murderer and is to suffer the full punishment for murder. Kat. (832-834)<sup>973</sup> and Br. (S. B. E. 33 p. 364 verse 32) provide that he who commences a crime of violence, who is a helper, who gives advice as to the way (in which *sāhasa* is to be carried out), who gives refuge (asylum) to the offender or supplies weapons, who gives food to wrongdoers, who incites (offenders) to put up a fight, who shows how the person (killed) is to be destroyed, who connives (at the commission of an offence), who exposes the faults (of the person killed), who gives his approval (to the offence), who though able does not forbid or prevent the commission of the offence—all these are (practically) perpetrators of the crime and the king should award punishment according to their ability and their guilt. Vide also Āp. Dh. S. II. 11. 29. 1.<sup>974</sup> For those who begin an offence or abet its commission Br. (S. B. E. 33 p. 364 verse 32) prescribes half the punishment prescribed for the wrongdoer.<sup>975</sup> Yaj. (II. 232-242) enumerates several kinds of offences as allied to *sāhasa* and prescribes punishments therefor, such as breaking a house that is closed under seal, causing harm to neighbours and *kulikas*

971. यः माहसं दक्षिपतेति कारयति स द्विगुणं दद्यात् । वायद्विरूपमृगयोर्यक्ते तावद् द्वापयामीति स चतुर्गुणं दण्डं दद्यात् । अर्थशास्त्र III. 17.

972. एकस्य बहवो यत्र महरन्ति कषाश्रिताः । मर्मग्रहणको वस्तु पातकाः स उदाहृतः ॥ बृह. q. by वि. र. p. 373, अ. घ. p. 395 ; मर्मपती तु पलेनो यथोक्तं द्वापयेद्वनम् । बृह. q. by स्मृतिच. II. p. 312, वि. र. p. 373.

973. आरम्भकृतसहायश्च तथा मार्गद्वेशकः । आश्रयः शस्त्रदाता च मत्तदाता विकर्मिणाम् ॥ पुद्गोपदेशकश्चैव तद्विनाशमर्शकः । उपेक्षाकारकश्चैव दोषवत्कृतमोदकः । अग्निविद्धा जलो यः स्वात्मैवेते कर्मकारिणः । पचाशकपतुल्यं तु दण्डमेव प्रकल्पयेत् । कात्या. q. by स्मृतिच. II. p. 312, परा. मा. III. p. 455, वि. र. p. 375, अ. घ. p. 395. There are slight differences in readings.

974. पयोजयिता मत्ता कर्तेति स्वर्गनरकफलेषु कर्मसु भागिनः । अथ. य. सू. II. 11. 29. 1.

975. आरम्भकृतसहायश्च दोषवर्गी तदर्थतः ॥ बृह. q. by परा. मा. III. p. 455, वि. र. p. 374, अ. घ. p. 395. Compare sections 119 and 120 of the I. P. C. for lesser sentences in the case of abettors.



( one's agnates ), abandoning one's parents or sons or brothers or sisters even though they be not *patita*, sexual intercourse with a widow, (intentional) defilement of the higher castes by *candālas*, making counter-feit coins or false weights and measures, giving quack medicines to royal officers or other men. These are all passed over here.

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## CHAPTER XXV

### STRĪSĀNGRAHANA (Adultery or unlawful intercourse with a woman ).

The Mit. ( on Yāj. II.<sup>976</sup> 283 ) states that *sāṅgrahana* means the unlawful coming together of a man and a woman for sexual enjoyment. Br. ( S. B. E. 33 p. 365 verses 1-2 ) says that sinful<sup>977</sup> *sāṅgrahana* is of three kinds, viz. brought about by force, deceit or sensual passion. The first ( which is rape ) occurs when intercourse is had in a secluded place against the will of a woman, or with a woman who is intoxicated or is disordered in mind or is under a mistake or when she raises a cry ; the second occurs when a woman is brought to one's house by some trick or pretence, an intoxicant ( such as *Dhaturā* ) is administered to her or her mind is brought under control ( by chants or otherwise ) and sexual intercourse takes place ; the third occurs when intercourse takes place by conveying ( passion ) to each other by means of the eyes ( glances ) or by employing a go-between and when the parties are drawn to each other by the temptation of beauty or of wealth. This last is again of three kinds acc. to Vyāsa and Br. ( S. B. E. 33 p. 365-66 verses 6-8 q. by Sm. C. II. p. 8 ) viz. trifling, middling and grave. The first is characterised by winking at a woman, smiling at her, sending a go-between, touching her ornaments or clothes ; the second by the sending of flowers, unguents, fruits, incense, food, clothes, and indulging in private talks ; the third is characterised by lying on the same bed, dalliance, kissing and embraces. Strī-sāṅgrahana by force ( that is rape ) is really included under

976. स्त्रीदुःसपेक्षितुर्गतायाः संग्रहणम् । मित्ता. on या. II. 283 ; संग्रहणं परस्मिन्ना सह दुःसपेक्ष सम्बन्धः । स्मृतित्च. II. p. 8 ;

977. पापमूलं संग्रहणं त्रिविधं निबोध । बलपयिष्ठे द्वे तु कुर्वन्मनुष्यजनम् \* अनिच्छन्वा पत्निकथे नरोन्मत्तजनस्य वा । बलपन्था च रहसि बलात्कारकृतं तु तत् । उच्छ्रमा युवमानीष दुःखा वा मद्यकामेनम् । संयोगः क्रियते यच्च ननुपपिष्ठते विदुः \* अन्वयेन च बलपानेन हृत्तीसपेक्षणेन वा । कुले स्वपार्श्वलोभेन द्वेयं तदुत्तरागजम् । बृह. v. by अपराकं p. 534. स्मृतित्च. II. p. 8, स्व. य. p. 397, ति. र. p. 379, परा. मा. III. p. 463. There are many various readings. The स्मृतित्च. explains कामेन as कामेना वशीकरणम्. Compare section 373 of the I. P. C. with the first kind, sec. 493 with the 2nd kind and sections 497, 498 with the 3rd kind.



*sāhasa*,<sup>978</sup> as stated by the Madanaratna, the V. P. pp. 396-397 and others. The punishments for rape were very heavy. Br. (S. B. E.<sup>979</sup> 33 p. 366 verse 10) states that if a man commits rape on a woman of the same caste, he was to forfeit all his property, to have his penis and testicles cut out and was to be paraded on the back of an ass, that if the woman raped was of a lower caste, then half of this punishment was to be awarded and if she was of a higher caste, he was to be sentenced to death together with confiscation of all property. Kat. (830) prescribes that when<sup>980</sup> a man has forcibly had sexual intercourse with a woman capital punishment is to be inflicted inasmuch as it is a violation of (proper) conduct. When sexual intercourse was had by deceit the man was punished with confiscation of all property, with branding on the forehead of the sign of the female private parts and banishment from the town (Br. in S. B. E. 33 p. 366 verse<sup>981</sup> 11). Here also the rule of Br. cited above (about the reduction of sentence according to the caste of the woman concerned) applies. In the case of rape and sexual intercourse by deceit the woman was not at all punished<sup>982</sup> but she had to undergo a penance (*prāyaścitta*) of *kṛcchra* or *parāka* for contact with a male other than her husband and till she performed the *prāyaścitta* she was to be kept well-guarded in the house, was to remain dirty (i. e.

978. तत्र बलाकारकृतं स्त्रीसंयवर्णं साहसमाप्त्युत्पन्नं तत्पराकरणे अदूनैव दक्षितम् ।  
मदनरत्नम्. Compare sec. 376 of the I. P. C. which prescribes transportation for life as the maximum punishment for rape. Vide Russell on Crimes (9th ed. 1936) vol. I, pp. 613-614 for the ancient law of England (which provided death sentence and the sentence of castration and loss of eyes) and modern law which provides penal servitude for life as the maximum.

979. सप्तमा कामपेक्षस्तु धर्मं तस्याभिलक्षेत् इत्येत् । उक्तुरप तिष्ठतुषणी ज्ञानपेदुर्दमेन तु ॥  
ब्रह्मो नेपः सनाथो तु स्त्रीतापानधिकस्ततः । इतः कार्याधिकार्यो तु धर्मेन संप्रमापयेत् । बृह.  
q. in स्मृतिच. II. p. 320, एष. य. pp. 396-397, परा. मा. III. 466.

980. स्त्रीसु हृद्योपभोगः स्वायत्तमस्तु पुरुषो यदा । यद्येवमप्येतत् कार्याधिकरणं हि तत् ॥  
कारपा. 830 q. by स्मृतिच. II. p. 320, एष. य. p. 397, एष. म. p. 244. All these three works differ as to the circumstances in which this verse applies.

981. छत्रमा कामपेक्षस्तु तस्य सर्वदरो दुर्मः । अङ्कुरित्वा भगवत्तेन दुराचिर्वासयेत्ततः ॥  
बृह. q. by स्मृतिच. II. p. 320, वि. र. p. 389.

982. अनिच्छन्ती तु या मुक्ता हस्तं तो वासवेदयेत् । अलिनाङ्गुलिभः स्रष्टां पिण्डमाश्लिष्यतीतिगीम् । कारपेक्षिण्डुलि कुण्डं पराकं वा सने गताम् । स्त्रीनवर्णोपभुक्ता वा रघाया कथा-  
यमा भवेत् । बृह. q. by स्मृतिच. II. p. 321, वि. र. 400. For कुण्ड and पराक see  
सु. XI. 212 and 216. The स्मृतिच. II. p. 320 says: 'तयागीतरपुत्रसंसर्गवर्ण-  
नार्था सम्पद्यते । तत्त्वार्थसम्पन्नार्थता अत्रापि बृहन्नायामिह सनाया । सा यावद्विषेन काञ्चिद्व-  
पेति ऋचिभेत्वाह बृहस्पतिः । अनिच्छन्ती &c. '

not to deck herself or apply or use perfumes &c.), to lie on the ground (not on a bedstead or couch), was to receive bare maintenance. After performing *prāyascitta* she was restored to her former position. Acc. to Yāj. II. 286 and Br. (S. B. E. 33 p. 366 verse 12), for adultery (in which there is consent) the highest fine is prescribed for the male in the case of a woman of the same caste, half of this in the case of a woman lower in caste (than the paramour), but when adultery is committed with a woman of a higher caste the male shall be put to death and the woman shall have her ears and the like cut off. Vide Shakespeare's *Othello* IV. 1, where Othello exclaims 'I see that nose of yours but not that deg I shall throw it to'. There were other sages who were humane and opposed to the punishment of disfigurement by way of the cutting of the ear or the nose. Yama<sup>982</sup> states that in the case of a woman guilty of adultery at her will, there was to be no punishment of death or disfigurement, but only abandonment. Kat. (487) lays down the general rule that in all offences women should be sentenced to half the fine in money which is prescribed for a male and that when the punishment is death for a male the punishment for a woman would be cutting off a limb (vide note 626).

Nār. (XV. 73-75) holds<sup>983</sup> that sexual intercourse with the step-mother, mother's sister, mother-in-law, the paternal or maternal uncle's wife, father's sister, a friend's or pupil's wife, sister, sister's friend, daughter-in-law, daughter, the wife of one's vedic teacher, a woman of the same gotra, a woman that has sought protection, with the queen or an ascetic woman (*prauṣṭhā*) or a wet-nurse or a virtuous wife (*sūdhvā*) or a woman of a higher caste is incestuous and the punishment to be prescribed for this crime is the excision of the penis and no less. Vide Mann XI. 170-71, Kauṭ. IV. 13,<sup>984</sup> Yāj. III. 231-233, Matsya-

982a. स्वयच्छ्रुत्वा च वा नारी तस्याऽप्यागो विधीयते । इति वसन्तस्यह् ॥ ... न वधे न च वैश्ये वधे क्षीणे विधत्ते । क्षीणे ज्ञापयणे वधे कुर्वन् विसर्जयेत् तस्मात् कुर्वादिपर्यः । वैश्ये कर्मनासाद्यप्यधिकृतं तदपि भद्रं न कदाचित्कार्यमित्यर्थः । न चैव क्षीणं कुर्वाणं चैवाप्यधिकृतम्-इति तेनैवोक्तम् । खुनिच. II. p. 246; vide परा. मा. III. p. 477 also.

983. माता मातृधमा चभूर्मातुलानी पितृधमा । पितृधमसिधिरपहो भगिनी तत्सखी सखा । इक्षिताचार्यभार्या च स्मोत्रा जग्धामता । राक्षी पवत्रिता धात्री माध्वी तर्पोत्समा च वा । आसामस्यसमो मया सुस्तस्य जग्धते । शितनस्त्रोक्तार्थे तस्य मातुलौ वृण्वो विधीयते । मातृ XV. 73-75, The vi. r. p. 392 remarks: माताश्च जननीत्यतिरिक्ता पितृधमी । सुताधिक्यमेतत्.

984. मृतापपन्नभगिनी मातुलानीमाचार्याणीं सखा इक्षितं भगिनीं सविचरः पितृधमेदं वधश्च । सकामा तदेव समेत । अर्थशास्त्र IV. 13.



purāṇa 227, 139-141, which latter (three) prescribe excision of the penis and death by way of punishment (except for a brāhmaṇa) and expiation and for the woman (if she was a consenting party) death sentence. Brhad-Yama III. 7, Āp. (in verse) IX. 1 (Jīvananda ed.) and Yama (Ānandaśrama) 35 prescribe that there is no expiation except that of entering fire for incest with mother, teacher's wife, sister or daughter. It is remarkable that Kaut.<sup>985</sup> and Yāj. (II. 293) prescribe only a fine of 24 paṇas for adultery with a female ascetic, while Nār. XV. 74 and Matsya 227, 141 deem it a most heinous offence. The explanation probably lies in the fact that Kaut. and Yāj. refer to female ascetics of the lowest castes not following the orthodox religion, while Nār. refers to nuns of a higher order. Vide Manu VIII. 363 also. For forcible intercourse with a prostitute against<sup>986</sup> her will Kaut. IV. 13 and Yāj. II. 291 prescribe a fine of 12 and 24 paṇas respectively. For unnatural offences or offences against the order of nature, Kaut. IV. 13, Yāj. II. 289, 293, Viṣṇu Dh. S. V. 44, Nār. XV. 76 provide fines of 12, 24, 100, 500 paṇas<sup>987</sup>.

Manu IV. 134 (= Anuśāsana 104. 21 = Mārkaṇdeya-purāṇa 34. 62-63) forbids a man to have sexual intercourse with another's wife and states that there is nothing so detrimental to long life as that. There are stray indications in the Vedic literature about sexual intercourse outside marriage. Vide H. of Dh. II pp. 637-639. In Rg. I. 92. 4 (*adhi peśūmāṁ tapyate nṛtūr-ṇa*) there appears to be a reference to a dancing girl or *hetaira*. Wives hating (or proving false) to their husbands are believed to go to Hell in Rg. IV. 5. 5 (*patiripo na janayo durevāḥ*). In Rg. II. 29. 1 the sage prays to the Ādityas 'remove away from me sin as a woman who gives birth to a child in secret removes it' (*āre mātarkaḥ rahasūr-ṇāgāḥ*). The gambler (in Rg. X. 34. 4) states 'others have intercourse with his wife' (*anya jūyām pari mṛśantyaṣya*). The word *pamācalī* occurs in Vāj. S. XXX. 22. We have already seen (H. of Dh. II pp. 576, 1098) how in the Varuṇapraghāṇa (one of the Cāturmāsyaṇs) the wife of the sacrificer had to confess if she had a lover and how even after

985. गच्छन्तिनामने चतुर्विंशतिपणो दण्डः । सवामा तद्वेत् लभेत् । अर्धशास्त्र IV. 13.

986. कपानीवायाः वसद्योपभोगे द्वादशपणो दण्डः । अर्धशास्त्र IV. 13 ; तथा गच्छन्तिनामानीवाया तथैव च । द्वादशपणो विद्विहास्तास्तु गमने अर्धः । शिशुनयेत्येक-  
नेन कृत्वा तत्तत्तु वधमर्थेति । मत्स्य. 227. 141.

987. क्षिप्रमप्येनौ गच्छताः पूर्वः साहसदण्डः दुरुचमधिमेष्टतश्च । मैथुने द्वादशपणस्ति-  
र्हप्योतिषकान्तनः । अर्धशास्त्र IV. 13.

she confessed to having had one she was allowed to co-operate in the sacrifice on undergoing an expiation. After a man performed the solemn sacrifice called Agnicayana he was enjoined (Tat. S. V. 6. 8. 3)<sup>988</sup> not to approach a śūdra woman and after he performed Agnicayana twice he was not to approach another's wife (H. of Dh. vol. II. p. 1255).

The punishment for sangrahaṇa (rape and adultery) varied according to the caste of the man and the woman, according as the woman was married or unmarried and according as she was guarded (*guptā*) or unguarded. Vide Gaut. XII. 2, Vas. XXI. 1-5, Manu VIII. 359, Viṣṇu Dh. S. V. 41, Yaj. II. 286, 294, Nār. XV. 70 (as to higher or lower caste of offender), Gaut. XII. 3, Manu VIII. 374-378, 382-385, Kauṭ. IV. 13 (about offence against guarded or unguarded woman), Manu VIII. 364-370, Yaj. II. 285, 287, Kauṭ. IV. 12, Nār. XV. 71-72 (about maidens). Further the ancient sūtras and smṛtis prescribe more severe sentences than later smṛtis. Details of these matters are passed over here for want of space and as being now of academic interest only. But some examples may be noted. Gaut. XXIII. 14-15 and Manu VIII. 371 prescribe for an adulteress death by being devoured by dogs, but Yaj. II. 286 softened the rigour of this. Āp. Dh. S. (II. 10. 26. 20-21) prescribed the penalty of cutting the penis and testicles for the male if guilty of adultery with a married woman, but only confiscation of all property if he committed adultery with an unmarried woman. But Yaj. II. 288, Manu VIII. 366, Nār. XV. 72 went so far as to say that if a man had sexual intercourse with a maiden (of the same caste) who encouraged his advances, then there is no offence punishable by the king, but he was to bestow ornaments on her, honour her and must marry her.

It has further to be noted that Yaj. II. 290 and Nār. (XV. 79)<sup>989</sup> make it punishable to visit a dīst kept by a man in his own house or outside and Yaj. prescribes the fine of 50 paṇas for so doing. Vide H. of Dh. vol. II. pp. 637-639 about prostitutes. But Manu VIII. 362 states that the rules making conversation with others' wives in lonely places punishable does not hold good in the case of the wives of actors, singers

988. याद्विं चित्वा रामादुपैवाद्बोभौ श्रो पाश्चात्मीति न द्वितीयं चित्वाचरन् विप्र-  
मुदेवाकं पुनरि चित्वा कां च नोपैवात् । नै सं. V. 6. 8. 3-4.

989. आश्वेन तु मुक्तिप्राप्तुं क्षेत्रं स्थापयद्वाचत् । यस्या अपि हि नोपेवां वरतां  
वरपरिव्रजः ॥ यावद् XV. 79.



and those who live on the earnings of their wives, since they themselves introduce their wives to others and make them mix among men ( while they themselves remain concealed ).

*Strigandharma* ( duties of husband and wife ). Most of the matters falling under this head have been dealt with in H. of Dh. vol. II, pp. 556-592. The liability of the husband or wife for the debts of the other has been already dealt with under *vyādina*. The rights of partition, inheritance and maintenance will be discussed later on under *śāyabhāga*. Nar. XV. 1 defines this title of law as that in which the rules of the marriage of women and men and other related matters are described. Under this head Nar. speaks of the essential ceremonies of marriage, the rules about selecting a bride and a bridegroom, restrictions as to the caste of the bride, the guardians for marriage, faults or defects in a proposed bride or bridegroom, the forms of marriage, women called *punarbhā* and *śāstri*, the practice of *niyoga*, illicit sexual intercourse, punishment of women for adultery, re-marriage, *varṇasāhkaṛa*, mixed castes. In IX. 1 Manu promises that he will dilate upon the obligatory duties of man and wife, whether they are staying together or apart. Manu IX. 2 holds that the first duty of the husband and the males in his family is to keep women dependent and under their control if they become attached to a life of pleasure and Nar. XVI. 30 states that even women of good family come to ruin by independence. The next most important matter acc. to Manu IX. 5 and Br. ( S. B. E. 33 p. 367 verse 2 )<sup>990</sup> is to guard women against improper attachments however trifling, since if they go astray they bring sorrow to both families ( of the husband and of the father ). Acc. to Hārta,<sup>991</sup> Sāṅkha-Likhita,<sup>992</sup> Manu ( IX. 7, 9 ) and others the husband has to guard the wife from the approaches of other men in order to ensure the purity of the issue and by guarding her the husband guards his reputation, family, soul and his *dharma*,

990. सुमेधोऽपि वसन्तु-यो निवार्य स्त्री स्वयत्यामि । शम्भवादिभिः सुवस्त्रीभिः पालनीया विमानिषम् ॥ इव. प. by स्मृतिच. II. p. 239, स्व. प. p. 405, वि. र. p. 411.

991. तस्मादेतेषां पालनार्थाय रक्षन् । आशानां कुलनाशः कुलनाशे कनुनाशः कनुनाशे देशपितृपञ्चनाशः, पञ्चनाशे धर्मनाशः, धर्मनाशे आत्मनाशः, आत्मनाशे सर्वनाशः । तस्मादेते धर्मशीले सुसुतां धर्मा रक्षन् । शारीत प. by स्मृतिच. II. p. 239, वि. र. p. 410, स्व. प. p. 405. मनुस्मृतम्.

992. वैश्विन्भावोऽर्पितः स्त्रीयामात्रे सञ्जीलं हृत् जनयति यथा नीलवृषेण नीलवृष-कनकपत्रः श्वेतं श्वेतं हृत् जायते । एवं गोमित्रेण बलश्री परमावृणोः संजीयन्ते । अङ्गुलिशितं q. by वि. र. p. 414, स्मृतिच. II. p. 241, स्व. प. p. 408 ( at p. 405 reads तादृशं सत्तु जनयति ).





## CHAPTER XXVI

### DYŪTASAMĀHVAYA

( Gambling and prize-fighting )

Manu IX. 223, Nār. XIX. 1 and Br. (S. B. E. 33 p. 385 verses 3) define *dyūta* (gambling) as that sport which is carried on with inanimate objects such as dice, pieces of leather, ivory and the like and in which there is a stake, while sport carried on with animate objects such as cocks, pigeons, rams, buffaloes and wrestlers is called *śamāheya*. The attitude of Manu towards gambling was uncompromising. Manu (IX. 221-222, 224-226) calls upon the king to suppress gambling and prize-fighting in his country as they cause the destruction of the State; he states that gambling is open theft and therefore the king should endeavour to put it down and that the king should punish with corporal punishment all those who engage in gambling or who induce or help others to gamble, and that he should banish gamblers from the city because gamblers residing in the country harass wellconducted subjects by their deceitful tricks. Manu IX. 227 (= Udyogaparva 37. 19) states that in ancient times gambling engendered great enmities and therefore a wise man should not resort to it even for amusement or in jest. Kāt. (934) is to the same effect. Yāj. II. 203 and Kaut. III. 20<sup>794</sup> allowed gambling in a central place under State supervision as it led to the detection of thieves. Br.<sup>795</sup> (S. B. E. 33 p. 385 verse 1) refers to this divergence of views: 'Gambling that causes loss of truth, purity and wealth was forbidden by Manu, but others allowed it because it led to the detection of thieves, provided it was carried on in the presence of a master of the gambling hall and provided it yielded revenue to the king'. The person who was in charge of the

७९४. द्यूतमेकदुर्लभं कार्यं तत्करज्ञानकारणम् । वाङ्म. II. 203 ; द्यूताभ्यस्तो द्यूतमेकदुर्लभं कारयेद्दुर्लभं दीप्यते । द्वादशमणो दुर्लभः षड्दानीविज्ञानार्थम् । अर्धश्राव III. 20; द्वयं द्यूताद-  
तिर्यस्माद्विषं सर्वदुर्लभादिषु । तस्माद्राजा निषर्त्तते विषये न्यसनं हि तत् । कात्या. q. by  
वि. र. p. 611.

७९५. यत्र निषिद्धं मनुना सत्यज्ञानवद्वयम् । अप्यनुज्ञानमप्येवम् राजभाष्यसमन्विताम् ।  
मनिकथिहितं कार्यं तत्करज्ञानहेतुना । बृह. q. by स्मृतिक. II. p. 331; अपराकं p. 505,  
वि. र. 611-612.

gambling hall which gamblers made their haunt and who supplied the dice and other instruments of gambling was called *sabhika* and the stake or money agreed to be paid by the defeated gambler to the winning gambler was called *papa* or *glaha* (Yāj. II. 199). Nār. XIX. 8 provides an optional method viz. instead<sup>996</sup> of gambling in a hall presided over by a *sabhika*, gamblers may give the king his share in the stakes, then indulge in gambling openly and if they do so they incur no punishment. Acc. to Yāj. II. 199 as interpreted by Par. M. III. p. 574 and V. P. p. 565 the *sabhika* was to receive five per cent or  $\frac{1}{20}$ th part when the stake was 100 *papas* or more and 10 per cent or  $\frac{1}{10}$ th when the stake was less than 100 *papas*. Aparārka (p. 803) explains that the *sabhika* was to receive as his fee five per cent from the victorious gambler and ten per cent from the losing gambler. Nār. XIX. 2 prescribes a flat rate of ten per cent on the stake as the fee of the *sabhika*, while Kauṭ.<sup>997</sup> III. 20 lays down the fee as five per cent and allows the *sabhika* to charge hire for supplying gambling accessories (such as dice, leather pieces) and for supplying water and accommodation. The *sabhika* receiving protection from the king was to pay to the king the tax agreed upon by him, was to recover from the defeated gambler the stake (by means of confinement or restraint order) and pay it over to the victor and was to be honest and forbearing<sup>998</sup> (Yāj. II. 200, Kāt. 940, Nār. XIX. 2). Kāt. (937) states that the *sabhika*<sup>999</sup> may give to the winner the money won out of his own pocket and may recover from the losing gambler within three fortnights or at once if there is fear of losing the money. Kāt. (935)<sup>1000</sup> holds that if gambling was to be allowed it must be carried on openly with an arch constructed near the door in order that respectable people might not be misled (about its real nature) and it should yield revenue to the king. If the *sabhika* is

996. अथवा कित्वा राजे दाना भागं यथांदिदम् । प्रकाशं देवने कुपुरेण दोषो न विद्यते ॥ कारम् XIX. 8.

997. जितद्वन्द्वान्वयः पञ्चके शतमादृतीत - काकज्यसारतालाकाकाकज्यमुदकायुमि-  
कर्मकार्यं च । अर्थशास्त्र III. 20.

998. यमस्य दायमेहेये तस्मिन्नायमे न मानयथा । कितं वै सभिकस्य सभिकमपयथा  
किंवा ॥ कारम्. 940 q. by अपरार्क p. 804, वि. र. p. 615.

999. जेतुर्द्वन्द्वान्वयः दान्वे जितान् दान् विपक्षकम् । तयो वा सभिकेनैव कितवान् न-  
संशये ॥ कारम्. 937 q. by अपरार्क p. 803, वरा. मा. III. 575, वि. र. 612.

1000. कौतं चेत् प्रकाशं तु द्वारावस्थितोरणम् । अस्मिन्नायमेवार्थो कारयेत्तत्करयद्वम् ॥  
कारम्. 935 q. by वि. र. p. 611.



unable to make the defeated gambler pay the stake to the victor, the king would make the former pay to the latter provided the gambling was done openly in the presence of the *sabhika* and a group of gamblers and the king's dues were paid by the *sabhika*, but not otherwise (Yaj. II. 201). Nār. XIX. 6-7 and Yaj. II. 202 provide that when gambling is carried on secretly and without the king's permission or with false dice or other deceitful tricks, the gamblers and the *sabhika* would not be able to gain their object (i. e. recovering bets won or the fee) and would be liable to punishment, viz. branding on the head (with dog's foot and the like) and banishment. Nār. XIX. 6 adds that the banished gamblers would have wreaths of dice tied round their necks. Kāt. (941) and Br. (S. B. E. 33 p. 386 verse 7) state that a person ignorant of gambling should, if defeated in gambling in private, be released from his liability, but one who is an adept in gambling should not be relieved when defeated; but even an adept in gambling if he has lost the whole of his wealth as a stake should not be made to pay the whole.<sup>1001</sup> In disputes among gamblers, in deciding on victory or in the matter of gain to the winner, and as regards the question of false dice the keeper of the gaming house, if honest, is the final authority<sup>1002</sup> (Kāt. 942). Nār. XIX. 4, Yaj. II. 202, Br. (S. B. E. 33 p. 386 verse 6), Kāt. (943) provide that when there is a dispute as to success or defeat the king should appoint gamblers to decide the dispute and gamblers will also be the witnesses in such a dispute (in spite of the rule stated above on p. 335 that gamblers are not competent witnesses), but if the gamblers are alleged to be inimical to the disputants the king may then<sup>1003</sup> himself decide the matter. Yaj. II. 203 extends all the rules about gambling to *gamhūnya*. Br. (S. B. E. 33 p. 386 verse 4) notes that the stake is to be paid by the owner of the animal that is defeated.<sup>1004</sup> The S. V. (p. 487) quotes a text of Viṣṇu and a (Bhāruṣi's?) gloss

1001. अनभिज्ञो जितो मोच्योऽमोच्योऽभिज्ञो जितो यः। सर्वेऽपि जितेऽभिज्ञे न सर्वस्य पदापयेत्। कात्या. ; यतो जितोऽमभिज्ञश्च कुतश्चै कपटेन वा। मोच्योऽभिज्ञोऽपि सर्वस्वं जितं सर्वं न दापयेत् ॥ बृह. ; both q. by अपराकं p. 804 and वि. र. p. 616. इति कटिका on या. II. 200 cites यो जितो etc.

1002. विज्ञेऽथ जयेऽगमे करणे कृत्वेतिनाम् । यस्मान्न सभिकस्तान् शुचिश्च सभिको यदि ॥ कात्या. 942 q. by अपराकं p. 804, वि. र. p. 617.

1003. उच्यतेऽपि सन्दिग्धो जितवान् यः परीक्षकः । पदा विज्ञेयिणस्तं तु तदा राजा निवारयेत् ॥ बृह. q. by अपराकं p. 804, परा. मा. III. p. 570, वि. र. p. 618.

1004. इन्द्रजितेन वा कश्चिद्वसतुमवाप्नुवान् । तस्यामिता यना देवः यस्तत्र परि-  
कल्पितः ॥ बृह. q. by वि. र. p. 614, स. वि. p. 486.

thereon that the king gets one-fourth of the stake from each of the owners of the fighting animals and that the animal that is defeated (except a wrestler or a buffalo) is to be made over, whether living or dead, to the owner of the winner. The *Mānasollāsa* (vol. III, p. 329) contains an elaborate description of a king's amusements by way of wrestling matches, cock-fights &c. The *Datākumāracarita* makes frequent reference to gambling. In *Ucchvāsa* II. (p. 47) we are told that there are 25 *kalās* on which gambling depends, that legal proceedings between gamblers were decided by reliance on the *sabdhika* and that out of a stake of 16000 *śūdras*, the successful gambler took half and distributed the other half among the *sabdhika* and the denizens of the gambling hall.

Gambling is one of the most ancient vices. Rg. X. 34 is a hymn which contains the lament of a gambler. Elsewhere also in the Rg. gambling is referred to. Vide Rg. I. 41. 9 (explained in *Nirukta* III. 16), VII. 86. 6 (where it is said that dice made of *Vibhīdaka* tree are one of the sources of sin), Rg. X. 42. 9, X. 43. 5. In the *Atharvaveda* also dice and *glāha* occur frequently. Vide *Atharva* IV. 16. 5, IV. 38 (a hymn for good luck in gambling). In *Vaj. S.* 30. 18 we have the words 'aksarājaya kitavam'. In certain solemn sacrifices like the *Rājesūya* dice play was an important item. Vide H. of Dh. vol. II, p. 1219. Pāṇini teaches the formation of many words relating to gambling. In II.<sup>1005</sup> 1. 10 he teaches the formation of *Anyayūthāna* compounds like 'aksapari' or 'śalākāpari' in the sense 'that loss was caused by one dice being cast in a way different from the way in which it was cast in a prior game'. In IV. 4. 2 he teaches that 'aksika' means one who uses dice in gambling or wins by using<sup>1006</sup> dice and in IV. 4. 19 he states that 'aksadyūtika'<sup>1007</sup> means '(enmity) brought about by using dice in gambling'. Vide also Pāṇ. II. 3. 57-58. Ap. Dh. S. II.<sup>1008</sup> 10. 25. 12-13 prescribe that in the

1005. अक्षप्रलाकारसंख्याः परिणाः । पाणिनि II. 1. 10, on which the महाभाष्य quotes a कारिका 'अक्षद्वयस्तृतीयान्तः पूर्वोक्तस्य यथा न तत् । कितवयवहारो च एकविंश-प्रलाकारयोः ॥'

1006. तेन दीप्यति जयति जयति जितम् । पाणिनि IV. 4. 2; अक्षदीप्यति जयति वा आशिकः ।

1007. निर्वृत्तेऽक्षप्रलादिभ्यः । पाणिनि IV. 4. 19; अक्षप्रलेन निर्वृत्तमाक्षप्रलीकं वेदम् ।

1008. समाया मध्येऽभिद्वेननुद्धृत्यावोदयाद्विषयेषु मन्त्राभितकाय यथाभावं । अर्वाः शुचयः सत्यशीला दीवितारः स्तुः । आप. ध. सू. II. 10. 25, 12-13.



midst of the *sabhā* (hall) having raised a table for playing dice one should place thereon dice even in number and made from the *vibhitaka* wood and that players should be men of the three higher castes, pure and devoted to truth. In the *Mahābhārata* Yudhisṭhira<sup>1009</sup> is made to say that it was his vow not to refuse dice play when he was challenged to it. It was well-known that gambling affects the minds even of the good, while in the case of those who were not ordinarily good it led to dissensions and calamities. Many modern people justify the action of Yudhisṭhira on the ground that the code of *ksatriya* chivalry and morality of those ancient days required that he should not be afraid to play with dice when challenged by an adversary. Conceding for the sake of argument that indulgence in gambling even on the part of such a virtuous, noble and philosophic warrior as Yudhisṭhira was justified or at least excusable, there is nothing to show that the code of *ksatriya* chivalry permitted him to gamble away his own spirited, devoted and virtuous queen and his four valiant brothers. It appears that the real aim of the great author of the *Mahābhārata* is to emphasize that gambling is such a reprehensible pastime and so ruinous and degrading that even the greatest and the best, when once they indulge in it, lose all sense of duty, morality and of the claims of love and affection. It has already been seen how gambling was looked upon as a great vice in the king by writers on politics and also on *dharmasāstra*. Even the *Purāṇas* here and there condemn gambling. For example, the *Brahmapurāṇa* (171. 29-38) condemns it in strong language. It says that the gambler's wife is always in distress and the gambler on seeing the condition of his wife is also worried (this is in almost the same words as *Rg. X. 34. 10-11*), that the *Veda* condemns gambling and that there is no sin comparable to gambling.

1009. अहोरात्रं न निवर्त्तते कदाचिन्नद्यादितं ज्ञात्वा नैव हने मे ॥ सभापर्व 38. 16: अहोरात्रं न विवर्त्तते कदाचिन्नद्यादितं । असौ तत्र जायते विद्वान् व्यसनानि च ॥ उद्योग 128. 6.

## CHAPTER XXVII

### DĀYABHĀGA

#### (Partition of wealth)

The word *dāya* has been used even in the oldest period of the Vedic Literature. Rg. II. 32. 4 (*dadātu vīram itadāyam-ukthyaṃ*) has already been quoted above (on p. 388). In Rg. X. 114. 10 (*śramasya dāyam nabhajantyebhyaḥ*) the meaning of the word seems to be 'a share' or 'reward'. In the Tai. S. and the Brāhmanas the word *dāya* appears to be employed in the sense of 'paternal wealth' or simply 'wealth'. In the story of Nābhānediṣṭha<sup>1010</sup> it is stated that Manu divided his *dāya* among (for) his sons' (Tai. S. III. 1. 9. 4). That 'dāya' here stands for 'dhana' follows from another passage of the Tai. S. (II. 5. 2. 7) 'Therefore they distinguish (or establish) the eldest son by wealth'. In the Tāndya Brāhmaṇa<sup>1011</sup> 16. 4. 3-5 also it is said 'Therefore whoever among (a man's) sons secures the best or major portion of wealth as *dāya*, him they regard as the son who would be the lord of all'. Another word viz. *riktha* occurring in the sūtra and smṛti literature is also employed in the Rgveda<sup>1012</sup> III. 31. 2 'the son of the body does not give to his sister the ancestral wealth, but makes her the receptacle for the son of her husband'. The word *dāyāda* (meaning a co-sharer, one who takes a share) occurs frequently in the Vedic Literature. In the Tai. S. VI. 5. 8. 3<sup>1013</sup> it is said 'Therefore women being destitute of strength take no portion (of Soma)

1010. बन्तु पुत्रेभ्यो दायं धनञ्जत् । तै. सं. III. 1. 9. 4; तस्मान्नेष्टं इत्थं धनेन निरवसायवन्ति । तै. सं. II. 5. 2. 7. आप. य. द. (II. 6. 14. 11-12) quotes both these texts when combating the view that the eldest son gets the entire ancestral wealth. For the story of Nābhānediṣṭha with slight variation, vide Ait. Br. 32. 9, which is an attempt to explain the obscure hymns Rg. X. 61-62.

1011. तस्माद्यः पुत्रायो दायं धनतममिवोपैति तं मग्धते वसेवेदं पात्रवपतीति । तांद्य 16. 4. 3-4.

1012. न जामये तान्यो रिक्थमरिक्त्वा चकार ममे सनिहुरिधानम् । द. III. 31. 2. This is explained in the Nir. (III. 6) as 'न जामये भगिनी ... तान्यः आत्मजः पुत्रः रिक्थे पारिषत् गच्छात् । चकार एतां वर्धनिवर्गी सनिहुरेतायादयम्'.

1013. तस्मान्निषो निरिन्ध्रिषा अदायादीरपि पापादुह उपतितरं वदन्ति । तै. सं. VI. 5. 8. 3. दायाद् is derived as दावमादुवे (from दा with अ).



and speak more weakly than even a wretched (low) man'. In the Atharvaveda V. 18.6 Soma is said<sup>1014</sup> to be the *dāyāda* of the brahmanas. Visvāmītra invites Sunahṣepa to share in the spiritual wealth (dāya) belonging to him (Alt. Br. 33. 5), calls upon his sons to follow him and states that he (Sunahṣepa) would accept them, his wealth (dāya) and his learning<sup>1015</sup>. The Nir. III. 4 quotes or summarizes other Vedic passages in which the words dāya and dāyāda occur. In Pāṇini II. 3. 39 and VI. 2. 5 the word dāyāda occurs.

The principal heads discussed under the *cyavahārapada* called *dāyabhāga* are two, viz. partition and inheritance. For at least a thousand years there have been two schools that widely differ on these two heads; they are respectively known as the school of the Mitākṣarā and that of the Dāyabhāga on account of the pre-eminent position of these works in the respective schools. The latter school is predominant in Bengal while the former prevails in the whole of India excepting Bengal. But even in Bengal there are in modern times families governed by the law of the Mitākṣarā. This work in intention and scope does not profess to be a treatise on modern Hindu Law. It concerns itself with pointing out what the law of the Smṛtis and writers of medieval digests was and has to eschew an exhaustive discussion of the modern case-law and legislative enactments that have made the Hindu Law appear in many respects to be entirely different from the law of the commentaries and digests. Generally speaking, only very important divergences made by legislation and case law in the ancient and medieval Hindu Law can and may be pointed out here.

The principal Sanskrit works of the Dāyabhāga school are three viz. the Dāyabhāga of Jimūtavahana, the Dayatattva of Raghunandana and the Dayakramasaṅgraha of Śrīkṛṣṇa Tarkalankāra. The Mitākṣarā school is subdivided into four sub-schools in which besides the Mitākṣarā, the supreme authority, other works are referred to as supplementary to it and as modifying some of its doctrines viz. the Benares school (which regards the Vīramitrodaya as of high authority), the

1014. न ब्राह्मणो हिमिवन्धोभिः पिपतनोरिव । सोमो ह्यस्य दायादु इन्द्रो भस्वा-  
भिस्तस्मिन् । अथर्व V. 18. 6.

1015. त्वमेवा दैवं मे द्वापरे मेव मे लोपमन्त्रश्च इति । ऐ. ब्रा. 33. 5। एष वः कुक्षिर्मा-  
त्रीरो देवराजसमन्वितः । वृष्णाश्च द्वापरे म उपेता पिशा पायु च विद्महि । ऐ. ब्रा. 33. 6.

Mithilā school (which relies on the *Vivādaratnākara*, the *Vivāda-candra* and the *Vivādacintāmaṇi*), the *Mahārāṣṭra* or *Bombay* school (where the *Vyavahāramayūkha* is of the highest authority in *Gujarat*, *Bombay Island* and *Northern Konkan* even superseding the *Mitākṣarā* in some matters and the *Vīramitrodaya* and the *Nirṇayasindhu* are also relied upon), the *Dravida* or *Madras* school (where the *Smṛticandrikā*, the *Vyavahāranirṇaya* of *Varadarāja*, the *Parāsara-mādhaviya* and the *Sarasvativilāsa* are also works of authority). In spite of some differences in the rules accepted in different provinces in all of which the *Mitākṣarā* is of high authority, all the provinces except *Bengal* are held to be governed by one school. Vide *Ambedkar v. Keshav* I. L. R. (1941) Bom. 250.

The words *dāya* and *dāyabhāga* have been variously defined in the digests. *Nār.* (*dāyabhāga*, verse 1) defines the *vyavahāra-pada dāyabhāga* as one in which sons arrange for the partition of their father's wealth. The *Madanaratna* as noted by the *V. Mayūkha* (text p. 94) reads 'arthasya pītryadeḥ' (wealth of the father and others) for 'pītryasya' in *Nārada's* verse. The *Smṛtisāṅgraha* quoted in the *Sm. C.* and other works states that the word *dāya* applies to wealth that comes to a man through the father or the mother and the *Nighaṇṭu* defines *dāya* as the paternal wealth that is to be divided.<sup>1013</sup> The *Dāyabhāga*, the *Mit.* and others explain that the words 'pītryasya' (father's) and 'putraih' (by the sons) in *Nār.* are only illustrative, the real meaning being that the word 'dāyabhāga' applies wherever the wealth of a relative (father, grand-father &c.) is distributed among his relatives (sons, grandsons &c.) simply on account of their relation to the deceased<sup>1017</sup> owner. This is borne out by the fact that *Manu* and *Nārada* both speak of the distribution of the mother's wealth also under *dāyabhāga*. The *Mit.* while introducing *Yāj.* II. 114 says that the word *dāya* means the wealth which becomes another's property simply by reason of the fact of his relation to the owner. The *V. Mayūkha* (p. 93) defines *dāya* as that wealth which is to be divided and which is not the wealth of re-united members.

1016. निमज्जन्तं विपुलं दायमाहर्त्तनीयम् । निपण्डु १. by खुलिच. II. p. 255, ख. म. p. 93; विपुलं दायमाहर्त्तनीयं च वत् । कथितं दायजत्वेन तद्विभागोपयोग्यते २ खुलिच १. by खुलिच. II. p. 255, ख. म. p. 93.

1017. पित्र्यत्वेति पुत्रैरिति च द्वयमपि सम्बन्धितानि यद्यपि सम्बन्धितानि सम्बन्धितानि विभागैः दायमाहर्त्तनीयमाह । दायमाह I. 3, इयं दायजत्वेन वदन्तं स्वामि-सम्बन्धादेव विविच्य दायस्य इति वदन्ति ननु वदन्ते निताः । अर्थाच्च निमज्जन्तं दायः । ख. म. p. 93.



The word 'dāya' though derived from the root 'dā' (to give) does not apply to 'heritable wealth' in the literal sense (of gift).<sup>1018</sup> The word dāya is rather conventionally used, though derived from the root 'dā'. In a gift (as stated in H. of Dh. vol. II. p. 841) there are two chief ingredients viz. 'abandoning one's ownership over a thing' and 'bringing about the ownership of another in that thing'. But in the case of dāya the deceased does not of his own accord abandon his ownership with the idea of creating ownership in another. The two (dāna and dāya) are analogous in this that in both there is cessation of the ownership of a man in a thing.

The Mit., the Par. M., the Madanaratna, the V. Mayūka, the V. P. and other works that follow the doctrines of the Mit. divide dāya into two varieties viz. *apratibandha* (unobstructible)<sup>1019</sup> and '*sapratibandha*' (obstructible). The first occurs in the case of sons, grandsons and great-grandsons, who, by the very fact of their being the sons or grandsons, obtain ownership in the (ancestral) wealth held by the father or the grandfather. In this case the existence of the father or grandfather presents no obstacle (*pratibandha*) to the son's or grandson's taking an interest by the very fact of his birth in the family property that is in the hands of the father or grandfather. Therefore this is called *apratibandha dāya*.<sup>1</sup> But when a man takes the wealth of his paternal uncle or a father succeeds to the wealth of his son because the uncle or the son dies issueless, it is *sapratibandha dāya*, as in these cases the nephew or the father has no right in the uncle's or son's property as long as the uncle or the son is alive or as long as the uncle or son has a son or grandson. That is, the life of the owner or the existence of a son presents an obstacle to the nephew's or father's succession. Hence it is *sapratibandha dāya*.

It is to be noted that the Dāyabhāga, the Dāyatattva and a few other works do not divide dāya into two kinds. According

1018. दीनो ह्यपि शुलका दापशब्दो ददानिमर्षणश्च गोपाः, सुतवज्जितादिसत्त्व-  
निवृत्तिपुत्रैकपरस्वर्गोत्पत्तिफलसाधनम् । न तु पुत्रादीनां तत्र स्वागोति । ततश्च दूरेस्तानि-  
सत्त्वगोपीनां तत्पुत्रादीनामपि यत्र ह्यपि स्वत्वं तत्र निवृत्तौ दापशब्दः । दापभाषा I. 4-5.  
Vide दापभाषा pp. 161, 163 for almost identical words. The M. p. (pp. 411-12)  
quotes these words and criticizes them.

1019. अथ च दापो द्विविधाः समतिवर्ग्योऽनतिवर्ग्यश्चेति । यत्र ह्यपि स्वागोति-  
शुलकादिरप्यभावे स्वं भवति स समतिवर्ग्यो दापः । यथा पित्रादीनां पुत्रादियत्नम् । यत्र ह्यपि स्वर्गो-  
त्पत्तिफलसाधनं जन्मान् आरम्भ स्वं भवति सोऽनतिवर्ग्यो दापः । तत्र स्वागोतिपुत्रसङ्गापरपर-  
पतिवर्ग्यकृतम् । मदनरत्न (च, folio 89).

to them, all *dāya* is *aparāhbandha* i. e. ownership arises in another only on the death of the previous owner<sup>1020</sup> or on the cessation of the latter's ownership owing to his becoming *patita* or a *sannyāsin* (ascetic).<sup>1021</sup> The doctrine of this school is called *aparāhbandhāvāda* (ownership arising on death), while the school of the Mit. holds the view of *janyasvatavāda*. This is the great difference between the school of the *Dāyabhāga* and that of the *Mitākṣarā*. The former does not recognise that the son, grandson or great-grandson acquires by birth any right of ownership in the ancestral property held by the father or other ancestor.

The two words '*sat*' and '*svāmīn*' are correlative, the idea underlying both is the same and they are two aspects of the same question. '*Sva*' means 'what belongs to a person' i. e. 'property'. It has direct reference to a thing and indirect reference to the owner of the thing. '*Svāmīn*' means 'master or owner' and directly refers to the person owning and indirectly to the thing. Vide Salmond's *Jurisprudence*, chap. XII, pp. 339-340 (9th ed. of 1937) for the idea of ownership. According to *Śiromaṇibhaṭṭācārya* *satva* is a separate *padārtha* (category) by itself, while others say that it is a capacity.<sup>1022</sup>

1020. ज्ञानो जीवतोः विमोचने दुष्कृतं स्वाम्यं नास्ति किं दृष्टव्यमेति ज्ञापनार्थं मन्वादिवचनम् । एतः श्रोत्रोऽपराधार्थः । न चोपरममाधमेन चित्रितं किंतु पतितपद्मजित-  
त्वाकुण्डलपति स्ववचिनाल्लेखितसाम्प्रदात् । द्वापनाम I. 30-31, p. 18; the vi. st. (folio 92) says 'ते (जीसुतगद्गनादृणः) सर्वे सप्रतिबन्धस्यैव दायस्य सत्त्वात् रिक्तसंविभाष-  
यैर्निर्दिष्टाभावात् पूर्वोक्तपुनर्विचारान्मूर्त्ता एव'.

1021. It is to be noted that becoming *patita* entailed loss of the ownership of wealth, even according to Indian writers, only if the proper *prāyaścitta* were not performed. For example, the V. P. (p. 429) states 'पातित्वे न प्रायश्चित्तमा-  
कारण एव स्वात्मनाशो विभाजनार्हता च । अन्यथा दूष्यसाध्वं प्रायश्चित्तमपि विमोः स्वप्नान्तेन न  
ह्यवात् ।' Ancient and medieval Hindu jurists were very considerate if one compares their prescriptions with the harsh laws against Non-conformists and Roman Catholics prevalent only about a hundred years ago in England and Ireland as briefly disclosed in Pollard's work 'Conscience and Liberty' pp. 46-48. The Caste Disabilities Removal Act (XXI of 1850) provides that so much of any law or usage in force in British India, which inflicts on any person forfeiture of rights of property or may be held to impair or affect any right of inheritance by reason of his renouncing or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law in British India. This act, therefore, did away with the effects of being *patita* without undergoing *prāyaścitta* or of being excommuni-  
cated by a caste for some grave lapse.

1022. स्वल्पं पदार्थान्तरमेवेति क्षितीमणिभट्टाचार्यः । स्वतन्त्रेण व्यवहारविषयत्वं सक्ति-  
विशेषो वेद्यमन्ते । तत्र स्वमन्त्रमिति कौचित् । वि. हा. (ms.) folio 96.



Since in defining *dāya* the idea of *svatva* (ownership) was brought in, many of the digests enter upon a learned disquisition on the question whether *svatva* is to be understood from the *śāstra* alone or is a matter of popular understanding. There is also an ulterior purpose in the minds of some writers in this discussion, viz. that of denying that *svatva* can arise by mere birth. The reasoning of those who say that *svatva* is to be understood from *śāstra* alone is as follows: Gaut. (X. 39-42) lays<sup>1022a</sup> down five sources of ownership common to all viz. *rikthā* (inheritance), purchase, partition, seizure, finding (of treasure and the like) and further states that in the case of brāhmanas acceptance of gifts is an additional source of ownership, conquest in the case of katriyas, gain by agriculture and service in the cases of vaiśyas and śūdras respectively. If ownership were to be apprehended from means other than *śāstras*, then this text of Gautama laying down sources of ownership that are common to all varnas and that are peculiar to each of the several varnas would serve no useful purpose and would be superfluous. Further Manu (VIII. 340) states that if a brāhmaṇa seeks wealth even by teaching or officiating as a priest for a man whom he knows to be a thief, he would be punishable like a thief. If *svatva* is a matter of popular understanding then this is not proper, since the priest or teacher who obtains the wealth from one who is in possession of stolen things would have to be regarded as guilty of no offence as he merely pursues the methods of earning wealth specially prescribed for him by the *smṛti* texts. Further, if *svatva* is not to be apprehended from *śāstra*, such complaints as 'a thing that belongs to me has been stolen by this man' would not be possible, as *svatva* being a purely secular matter the thief would himself be (or would have to be deemed to be) the owner of the thing, because the latter is in possession of it. Thieving is forbidden by *śāstra* and so on the view of *svatva* being apprehended from *śāstra* alone, such a complaint is understandable<sup>1023</sup>. Besides eminent

1022a. स्वामी रिक्तकचसंविभागपरिग्रहादिभिरेषु । ब्राह्मणस्याधिकं स्वयं कृत्रिणस्य विहितं विविधं वेदपशुद्वयोः । यो X. 39-42. The Mit. explains: स्वामतिषमनो दापो रिक्तकचः । कचः परितुष्टः । संविभागः सगणिकयोः वृथाः । परिग्रहो न्ययपूरणं जलदुग्धक्रादादिः स्वीकारः । अधिभोगो निष्पत्तिः दापोः ।

1023. वर्तते वर्यं पद्वले नरय स्वामी स एव न । अन्त्यवन्मन्त्रहते तु चौबोदोः किं न हृदये । तन्मात्राद्वत् एव स्वात्मानं मातुमन्त्रादपि । अन्त्यावृत्तमेतत् न दुर्लभं वक्तव्यमपि । विहितोपायैः शास्त्रे वधान्मै दृष्टं दृष्टं । ... न च स्वहृदये तद्वत् स्वेष्टाया विनिवृत्ते । विनिवृत्तौ सवेर्य शास्त्रेण निवृत्ते । संवत् १. ७१ स्थितिः. II. pp. 256-257, मधुनरत्न (folio 59), एव. न. p. 416. The last notes that 'तथापि दृष्टं दृष्टं' is the reading of the मधुनरत्न, but in my ms. of the मधुनरत्न the reading is as in the स्थितिः.

works and writers like the *Smṛtisaṅgraha* and Dharmśvara<sup>1024</sup> support the view. Those who hold that *svatva* is known only from *śāstra* explain that *rikṭha* in Gautama's *sūtra* means simply *dāya* and *saṁvibhāga* means partition of *dāya* which establishes the separate ownership of a person on a portion of *dāya* (vide V. P. p. 415).<sup>1025</sup> They further urge that Gautama's text does not specifically mention birth as a source of ownership.

Others headed by the Mī. hold that *svatva* is apprehended from worldly usage and not from *śāstra*. Their reasoning is: (1) just as rice effects an ordinary worldly purpose, so *svatva* brings about worldly transactions such as sale. What is not owned by a man does not enable him to effect such worldly objects and transactions as sale or mortgage. Such matters as the *Āhavanīya* fire that are prescribed by the *śāstras* are not useful in effecting secular purposes, but only *śāstric* ones. The *Āhavanīya* fire may be used in cooking rice, but that is in virtue of its ordinary nature as fire and not in its *śāstric* nature of being the *Āhavanīya* fire.<sup>1026</sup> (2) Even among Mlecchas and lowest peoples who are quite innocent of the knowledge of *śāstras*, the ideas of ownership arising from transactions of sale and the like do exist. Further (3) learned men well-versed in

1024. धर्मसङ्ग्रहकारणे धर्मेश्वरनन्देनारब्धमित् । मदनराज (folio 90), उपनिषद्  
चैतन्येश्वरसुनिना । सुनिच. II. p. 257. It is somewhat strange that Dharmśvara  
who is no other than the celebrated king Bhoja of Dhārā should be styled  
*dharmā* by the Madanaratna and *śāstrya* by the Mī. (on Yā. III. 24)  
and the V. Mayūkhā (p. 39).

1025. When a man dies his wealth is the *dāya* which several persons  
may inherit. In their case, it becomes their joint property. So their  
ownership, being joint, is denoted by the word '*rikṭha*'. The joint owners  
become exclusive owners of definite parts of the *dāya* by partition; thus  
partition is a source of ownership (in this case exclusive ownership of dis-  
tinct parts by several). But if there is a single heir then there can be no  
*saṁvibhāga* (partition) and so the source of his ownership is *rikṭha* and not  
*saṁvibhāga*. When there are several heirs *rikṭha* is on this view a source  
of joint ownership only. It must be said that on the hypothesis of Jīmāta-  
vāhana, *rikṭha* and *saṁvibhāga* rather coalesce with one another and cannot  
be distinguished so well as on the theory of the Mī.

1026. Vide the Mī. (on Yā. II. 114), V. P. pp. 419-422, V. Mayūkhā  
pp. 89-90, Par. M. III. pp. 482-483 for elaboration of this view. The S. V.  
p. 396 ff while accepting the view that *svatva* is *laukika* does not accept  
the reasoning of the Mī., particularly with regard to the *Āhavanīya* fire.



the Mīmāṃsā such as Prabhākara<sup>1027</sup> (on Jaimini IV. 1. 2) and

1027. The Mlt. (on Yā. II. 114) quotes a passage of Prabhākara on the *lipsāsūtra* and explains it. Jaimini's sūtra (IV. 1. 2) is वस्तिर्वातिः पुत्रवरः तस्य लिप्सापदस्यैव प्रथमकत्वात्. In this sūtra the word *lipsā* occurs. Therefore this is called *lipsāsūtra*. The words अर्जेन स्वयं नापद्वर्तते विन-  
तिविज्ञ occur in the Dāyabhāga also (II. 67 p. 49) and in Medhātithi on Manu VIII. 417. These words are quoted in the Mlt. as taken from Prabhākara (called *Guru*) and so it follows that even Medhātithi quotes from Prabhākara. The earliest extant commentary of Sabara offers three explanations of this sūtra, which deals with the question of what is *kratvartha* and what is *puruṣārtha*. The third explanation concerns itself with the rules about acquiring wealth (which is necessary for performing every sacrifice) such as acceptance of gifts in the case of brāhmanas. The question is whether these rules about the means of acquiring wealth are *kratvartha* or *puruṣārtha*. If they are the former (i. e., if they are meant to be directly connected with the sacrifice) then a sacrifice performed with wealth not acquired according to the rules of sūtra will be defective or a nullity. But if the rules are *puruṣārtha* (i. e., addressed to the sacrificer only or to his conscience and sense of dharma) then even if the sacrifice is performed with wealth not acquired in accordance with sūtra there will be no defect in the sacrifice itself, only the acquirer will be at fault and may have to perform *prāyaścitta*. Says Sabara: एवं वा द्वावर्जनसमुदाहरणम्। इह द्वावर्जनं तैत्तिरीययोः क्षुपते। नाग्न्यवर्य पतिग्रहादिना राजन्यस्य जवादिना वैश्वस्य कुश्यादिना। तत्र सर्वदेहः किं कल्पार्थं दृष्टपरिग्रह उत पुत्रपार्थ इति।

The Mlt. points out that in the plausible view (*pūrvapakṣa*) and the established conclusion (*siddhānta*) it is assumed that acquisition of wealth by acceptance of gift is a matter known from worldly usage (*lokaniddha*). The comment of Prabhākara (called *Guru*) on this sūtra is not yet available in print. The Sm. C. II. pp. 357-256, the Madanaratna, and V. P. p. 420 quote a passage from the Nayavivēka of Bhavanātha on the same subject and explain it. The *Madanaratna* says 'उक्तं चैतन्नपवित्रेण जनाकरमताम्बुजप्रभाकरेण भवार्थेन। लोकाभिज्ञं वा अर्जेन जन्मादि। अत एवाभिज्ञं यमलोकाधीविषयता स्थिते निवृत्त्यर्थं (विषयतया व्यतिरिक्तनिवृत्त्यर्थं!) स्तुतिर्वाङ्मनादिस्तुतिवत्।' The passage as printed in V. P. p. 420 (अत एवाभिज्ञं यमलोकाधीविषयपरिज्ञं तन्निवृत्त्यर्थं स्तुतिः) is corrupt and hardly makes any sense. The V. Māyūkhā simply refers to Bhavanātha without quoting him. The vi. bh. (fol. 98) remarks 'मोमोमकैरप्युक्तं पतिग्रहादिविषयमार्गं पुत्रपार्थेन तेन विना अर्जितदृष्टे पुत्रपरिग्रह दोषः कदुमिद्विभक्तयेव।' Vide II. of Dh. vol. II. pp. 129-130 for quotations from several smritis laying down various means of livelihood. Manu X. 115 enumerates seven sources of wealth as sanctioned by sūtra viz. finding (of treasure), *ilāya* (inheritance), purchase, conquest, lending for interest, work (agriculture and trade), acceptance of a gift from a worthy person and in X. 116 mentions ten means of maintaining oneself (in distress). The Mahābhāṣya (vol. I. p. 483) on Pāṇ. II. 3. 30 states that a thing becomes one's own in four ways viz. by purchase, by seizure, by begging or by exchange 'यदेतत्स्वं नाम चतुर्विधमकारैरेवमिति कथनादुपहरणाद्याया विनिमयादिति.' It must be remembered that the enumeration of the means of acquiring property in the dharma-sūtra works is not exhaustive but only illustrative.

Bhavanātha, author of the *Nayaviveka*, hold that ownership which springs from certain fixed sources only (such as purchase) is a matter of worldly usage or experience. Bhavanātha says: the sources of acquisition such as birth and purchase &c. are known from the world. The conception about the sources of ownership was not started for the first time by the śāstra, but such sources have been known from times immemorial (long before the smṛtis). That is, the recognition of the sources of ownership is prior and śāstra only systematises them subsequently. Therefore the smṛti of Gautama (X. 39) only assigns their proper spheres to the several sources of ownership that are already well-known (viz. five are common to all, acceptance of gifts is peculiar to brāhmaṇas and so on). In this respect it is like the grammar of Pāṇini. Pāṇini does not create or lay down new words but he takes the words already current in the language and introduces a system about their formation. Similarly Gautama only voices a certain fixed system among the several sources of ownership. The Mīl. and its followers say that Gautama simply repeats the several sources of ownership known in ordinary worldly life (as the V. Mayūkha says 'lokasiddhā-kāraṇānuvādakam'). The Mīl., Par. M. III. p. 481, S. V. p. 402 and others hold that rikṭha and samvibhaga in Gautama's sūtra stand for apratibandha dāya and sapratibandha dāya respectively.<sup>1028</sup> The Mīl. meets the other arguments of its opponents by replying that in the first place that even ordinary popular usage does not recognise that the thief becomes the rightful owner by simply possessing the thing stolen and that in the case where a person says 'this man has stolen my property' there is doubt and dispute whether the man charged has got ownership by purchase or the like.

The purpose of this discussion of the topic whether ownership is only known from śāstra or is a secular matter is, according to the Mīl., as follows:—Manu XI. 193 (= Viṣṇu Dh. 8. 54, 28) states that when brāhmaṇas acquire wealth by reprehensible actions (such as accepting a gift from an unworthy person or engaging in the sale of articles which he should not sell)

1028. The word *rikṭha* is often used in the sense of *sapratibandha dāya* also as in Gaut. XII. 37 (*rikṭhabhīja ṇam prākṛyuh*) and Yāj. II. 51 (*rikṭha-grīha ṇam dāpyah*), Band. (*rikṭham vṛtāyāḥ kaṣṭyāyāḥ*) q. by the Mīl. on Yāj. II. 146. Vide *Hat Parson v. Bai Somli* 36 Bom. 424 at pp. 428-434 for an exhaustive exposition of the basic principles underlying the two kinds of dāya in the Mīl. and the *Vyavahāra-mayūkha*.



they are purified from the sin by abandoning that wealth, by repeating the sacred texts (like the Gayatri) and by austerities. If ownership springs from śāstra alone, what is earned by a person in ways condemned by śāstra cannot become the property of that man and so his sons cannot divide what is not his property. But if ownership is deemed to be a secular matter (*laukika*) then even what is obtained by condemned means becomes the property of that man, his sons incur no blame (though the acquirer may have to perform penance) and can divide that wealth (which is *dāya*), since Manu X. 115 enumerates *dāya* among the seven approved sources of wealth. The Madanaratna does not approve of this. Its reason briefly is that Manu XI. 193 simply lays down a penance, but does not say that wealth so obtained does not become the acquirer's property, that it is on account of this that Manu does not prescribe any special fine or punishment for one who acquires wealth by means of a bad gift, as he prescribes for a thief and that what is acquired by theft does not become the property of the thief and his sons cannot divide it and would incur punishment if they do so. V. P. (pp. 423-424) refers to the views of the Mit. and the Madanaratna and approves of the views of the former.

This discussion leads on to the next question, viz. whether ownership arises from partition or whether partition takes place of what already belongs to oneself (by birth). This subject has exercised the minds of writers on Dharmaśāstra from very ancient times. It should be noted that the difference of opinion relates only to the case of sons, grandsons and great-grandsons. All writers are agreed that persons other than these have no rights by birth in the wealth of their relatives. Those who oppose the view that sons acquire right by birth argue as follows:—

If sons have ownership by birth in ancestral property, then, on the birth of a son, the father cannot enter upon such religious duties as consecrating Vedic fires (which entail the expenditure of ancestral wealth) without the consent of the son. This would be opposed to the Vedic injunction "a man, whose hair is yet dark and who has had a son, should consecrate the sacred Vedic fires". Further, Smṛti passages stating that a gift made by the father to one out of several sons as a favour (*Nar. dāyabhāga* 6) or by the husband to his wife out of affection is not liable to partition would be meaningless, since such gifts cannot be made without the consent of the sons (on the

theory that sons acquire property by birth). Besides, there are *smṛti* texts like those of Devaia<sup>1029</sup> which expressly negative the son's ownership during the father's lifetime. Manu IX. 104 and Nār. (dāyabhāga 2) enjoining that sons should divide wealth after the father goes to heaven (because the sons are not masters when the parents are alive; as Manu says) indicate that sons have no ownership by birth. Moreover *śastra* is apprehended only from *śāstras* (like Gautama), which do not expressly enumerate birth as a source of ownership along with purchase and the like. Therefore the ownership of the son or sons arises on the cessation of the ownership of the previous owner (by his death or by his becoming *pūta* or becoming an ascetic). When there is a single son, he inherits on the death of the father and there is no necessity of a partition. But when there are several sons, they jointly inherit paternal wealth and can become exclusive owners of separate parts of the paternal wealth by partition alone. As this last is the most usual case, it is said that *śastra* arises from partition (*vibhagāt śaṣṭam*). If this doctrine that ownership arises by partition alone were literally interpreted, then an only son inheriting his father's property will have no ownership as urged by the Vyavahāra-nirṇaya, since there can be no partition in his case<sup>1030</sup>.

The arguments advanced by those who hold that ownership in ancestral wealth arises by birth are as follows:—

It has been established that ownership is a matter of ordinary worldly usage. It cannot be denied that it is quite well-known to all ordinary people that sons acquire ownership by birth. Besides there is the text of Gautama<sup>1031</sup> "the śāṅkya hold that one acquires ownership by birth itself". Moreover there are numerous *smṛti* passages like those of Yāj. II. 121,

1029. पितृदुर्गते पुत्रा विभजेदुर्धने पितुः । अस्माकं हि भवेद्देवा मिद्वेदे पितरि तिष्ठते ॥  
देवद. १. by दायभाग I. 18, p. 13, दीपकालिका (on या. II. 114), वि. र. p. 456;  
दरा. वा. III. p. 450.

1030. तथा विभागकत्वपक्षे एकपुत्रस्य मातापितृभ्याम्भवे विभ. श्यामाभातु स्वत्वं न स्यात्  
तेन कुलभेदादिव पितृगोत्रात्मकत्वेपि पुत्रस्य स्वाम्यनस्येव । स्वय. नि. p. 412.

1031. तथा 'उत्पत्त्यैवार्थस्वामित्वं लभेत्तदाचार्याः' इति गौतमवचनापक्षः । मिता. on  
या. II. 114. This is variously read by the digests and commentaries. The  
Madanaratna, Sm. C. II. p. 238 and Dāyatatva p. 164 read उत्पत्त्यैवार्थ  
स्वामित्वलभेत्तदाचार्याः. The स्व. न. p. 49. reads 'लभेत्तदाचार्याः', while स. वि.  
reads 'उत्पत्त्यैवार्थे स्वामित्वं लभेत्तदाचार्याः' (p. 402). Both Sm. C. and  
S. V. explain 'उत्पत्त्यैव मातृगर्भे क्षरिरोत्पत्त्यैवार्थः', while the सुवर्णवर्तिनी and the  
वाल्मह्वी on the मिताक्षरा explain उत्पत्त्यैव as जन्मस्यैव.



Br. (S. B. E. 33 p. 370 verse 3), Kāt. (839), Vyasa and Visṇu Dh. <sup>1021</sup> S. XVII 2 which expressly state that in the paternal grandfather's wealth, the father and the son have equal ownership (and so the right of the son must be by birth). Those who uphold the son's ownership by birth repel the arguments advanced in favour of the opposite theory as follows:—The Vedic text anjoining consecration of Vedic fires at a certain age indicates that the father has the power to spend for religious rites from ancestral wealth even after the birth of a son. Similarly as head of the family and its manager, the father has independent authority to spend ancestral wealth (except immovable property) for indispensable acts of religious duty expressly enjoined by Vedic and Smṛti texts and for making gifts of affection, for maintenance of the family and for ridding the family of distress. Further the father or the manager of the family can dispose of even immovable property by mortgage or sale in a season of distress or for the benefit of the family and for necessary religious purposes (such as śrāddhas <sup>1022</sup> etc.)

Ownership has to be distinguished from possession and custody. Further ownership is of various kinds, such as corporeal and incorporeal, sole ownership and joint ownership, ownership as trustee and beneficial ownership, vested and contingent. Even Western writers on Jurisprudence like Austin, Pollock and Salmond, find it difficult to define the exact meaning of ownership. Austin (Lecture XLVII) defines

1021. इष्ये पितामहोपासने स्वाधरे जह्मि तथा । समर्पितमाश्रयात् पितुः पुत्रस्य चैव हि ॥ बृह. ॥ by द्वापराय II. 50 p. 46, अपराय p. 728, व्यव. नि. p. 410, दीप-कालिका, स. नि. p. 374, नि. र. p. 461, न्य. स. p. 98. This is ascribed to व्यास by स्मृतिच. II. p. 379. पैतामहं समर्पे स्वात् पितुः पुत्रस्य योमयी । स्वयं चोपाजिते पित्रा न पुत्रः (साम्बमर्हति ॥ कात्या. ॥ by अपराय p. 728, व्यव. नि. p. 410, स्मृतिच. II. p. 379; कर्मायते युद्धक्षेत्रे पितृपुत्राः समर्पितः । पैतुके न पितामहार्हः सुताः पितुर-निच्छतः ॥ व्यास ॥ by अपराय p. 728, व्यव. नि. p. 410, स. नि. p. 475 (reads पुत्रपौत्राः समर्पितः), नि. र. p. 461; पैतामहे स्वयं पितृपुत्रयोः पुत्रस्य स्वाभिपक्षः । विश्व-धर्मसूत्र 17, 2.

1022. तस्मात् पैतुके पैतामहे च इष्ये जन्मनेव स्वाधरं, तथापि पितुरावश्यकेषु धर्मकृत्येषु वाचनिकेषु मसादधानकुटुम्बभरणपदिनोपदिष्टेषु च स्वाधरपदमिह ऋद्धयतिनिवोषे स्वाध-रन्वमिति विचारम् । स्वाधरे तु स्वाधिते पित्रादिपते च पुत्रादिवारत्नपक्षे । ... अस्यापवादः । एकतोपि स्वाधरे कुर्वाणानाधमनधिकपक्षः । आपत्काले कुटुम्बार्थे धर्मार्थं च निवेष्टा ॥ इति । मिता. ७७ वा. II. 114. This is the basic passage of the Mī. on which innumerable decisions have been given in the law reports, one of the latest and most authoritative being *Brij Nandan v. Mangla Prasad* L. R. 31 I, A. 129 quoted on p. 448 above.





by such an ancient writer as Śābara-svāmin<sup>1036</sup> that this passage does not deny the ownership of the wife or son in what she or he earns, but is only intended to lay down that the wife or son cannot independently (without the consent of the husband or father) dispose of what she or he earns. This view of the text of Manu is accepted by the Dāyabhāga as well as by the Mītasara School. The latter holds on the analogy of the interpretation of Manu VIII. 416 that the texts of Devaḥ, Nār, and Manu IX. 104 which apparently deny ownership (*svāmya*)<sup>1037</sup> to the son during the father's lifetime over property in the hands of the father are to be interpreted only as denying the son's power of independent dealing with such property during the father's lifetime or as referring to the self-acquisitions of the father. On the other hand the Dāyabhāga and the Dāyatattva try to explain away such passages as those of Yāj. II. 121, Viṣṇu and others (quoted above) that speak of the son's ownership by birth. The Dāyabhāga offers two explanations of Yāj. II. 121.<sup>1038</sup> The first explanation offered by it and taken from Udyota is:— If A has two sons B and C of whom C dies first, leaving a son D and then A dies, then Yāj. says that both B (son of A) and D (grandson of A) will be equally entitled to the wealth left by A and not B alone, though he is nearer to A than D, because both B and D offer pindas of the same efficacy to A in the pārvana-śrāddha and so there should be no difference between the two. The words "*sadṛśam svāmyam*" refer to this equality of the son and grandson. The 2nd explanation is that of

1036. On ३. VI. 1. 12 ३वर says 'एवं स्मरति । भार्या दातव्यं पुत्रश्च निर्धेनाः सर्वं पुत्रे । यथे ... तद्धर्ममिति ।'. Then on ३. VI. 1. 14 he remarks 'यन्मुच्यते भार्यापुत्रो निर्धेना इति । स्मर्यमाणमपि निर्धेनत्वमन्यात्पदेन द्युतिविरोधात् । तस्मादस्मात्तत्त्वमनेन प्रकारेणोच्यते संप्रकारमिति दूष्यार्थः ।'.

1037. यत्तु देवलोपि पितृपुत्रे ... निधते इति अत्राशान्दयश्चनमस्तत्तत्त्वमपि पादु-  
नाधमिति कदापि । द्युतिच. II. 250; vide also अवशर्क p. 718, ३वर. नि. p. 412,  
परा. सा. III p. 480 for similar remarks. 'देवलो पितृपुत्रे ... इति तद्विषयिनि  
स्वातन्त्र्यनिर्देशार्थं न वैतान्ते । नि. सा. folio 96.

1038. २३ पादुत्वपचचनं 'युयो पितृमहोपासा ... चोभयोः' इति तत्र निरवयव-  
विशोभोत्तेन द्योतिस्तत्त्वतोऽपमर्शः । यत्र द्वयोर्धर्मोर्धर्मितुकरात्तत्त्वमपि योरकः पुत्रस्तुपात्र-  
विनष्टोऽप्येवोर्धर्मि अभ्यन्तरे पितृ पुत्रः तत्र पुत्र एव तद्धनं वापोतु अतिरिक्तिकर्तव्यं तद्वै सप्तमे  
स्वातन्त्र्यमिति वचनम् । यथा वैवाह्यायने पितुः स्वायं तथैव तस्मिन्ने तद्व्याजामपि न तत्र  
यधिकर्तव्यकर्तव्यो कोपि विरोधः कार्यमपिपितृ पितृदानेन द्वयोर्धर्मि तदुपकारकताविरो-  
धाद्वैवमिवावयः । दायभाग II. 9, p. 29. Here the Dāyabhāga appears to refer  
to a very learned predecessor called Udyota, who is styled निरवयवि (of  
unblemished learning). From the व्यवहारनिर्णय (pp. 78, 455) it appears that  
उद्योतन was an ancient author on vyavahāra spoken of in the same breath  
with पारेश्वर and अमहाय.

Dhāreśvara viz. that when the father desires to make a partition, he may distribute his self-acquired property as he likes among his sons, but as to the property he got from his own father (i. e. the grandfather of his sons) he has the same ownership that sons have and he cannot make an unequal division at his sweet will. The *Dāyabhāga*<sup>1039</sup> rejects the view that Yāj. II. 121 enables the son to demand partition of the grand-father's property from the father even against the will of the latter or that father and son have equal shares in the grandfather's property. The same remarks apply to the texts of Viṣṇu and others viz. that in the grandfather's property father and son are equally owners and that the words "tulyam svāmyam" or "samamamṣītvam" do not mean that father and son take the same share therein.

From the above discussion it will be clear that the two schools of the *Dāyabhāga* and of the *Mitākṣarā* were not started by them for the first time, but each had respectable antiquity behind it. Smṛtis like those of Manu, Nārada and Devala and eminent authors like Udyota and Dhāreśvara had put forward the doctrine of *uparajama-svatantrāśā*, while the Smṛtis of Yāj., Viṣṇu, Bṛ. espoused the doctrine of *jannasvatantrāśā*. Viśvarūpa who commented on Yāj. (in the first half of the 9th century) holds that ownership arises by birth<sup>1040</sup>. The *Mitākṣarā* further supports that theory by citing a sūtra of Gautama (*utpattynica* etc.) which is not found in the extant Gautama-dharma-sūtra. This sūtra does not occur in Aparārka and several other works and is stated by Śrīkrṣṇa Tarkalāṅkāra (on *Dāyabhāga* I. 21 p. 14) to be not authoritative (*amūla*). These facts emboldened Dr. Jolly to go so far as to make the facile suggestion that it was fabricated by Vijñāneśvara or his predecessors (Tagore Law Lectures p. 110). We have seen that so early a writer as Viśvarūpa was excited over the question whether ownership arises on partition or by birth. The learned Doctor has failed to note that the ancient commentator Medhātithi (about 900 A. D.) favoured the view of ownership by birth and quotes (without name) the sūtra in a slightly different form (on Manu

1039. अतः पितापुत्रयोः पैतृकवस्तुनि समविभागायै सदसं स्वाम्यमिति तत्रैवं वृत्तान्तं न विभागस्यावश्यकमिति ननुद्वयमपि हेतुम् । द्वावभावाः II. 18 p. 31.

1040. वा विभक्त्या विभागस्तुतिः सा स्ववस्तुपातद्वयपक्षो दृश्यः । अतः स्वते सति विभाग इति सिद्धम् । निश्चयम् an. 'पूर्वं विभागहोपाया' (यत्. II. 124).



IX. 156).<sup>1001</sup> So it was not necessary for Vājāneśvara to fabricate a sūtra nor for any one else, for even in the absence of Gautama's sūtra the texts of Yaj. and others were quite capable of the interpretation put on them by the Mitākṣarā. It has to be noted that the Dāyabhāga<sup>1002</sup> does admit that in some (texts?) ownership is stated to arise by birth itself (*kecit jannanauddi*) and it explains that the words are not to be taken literally, but that birth is said to be the source in an indirect way, as the relation of father and son is based upon birth and on the death of the father the son's ownership arises (therefore though ownership directly arises on death, birth may be said to be the source of it as the son is the first heir because of his being born as a son to the father). The Dāyatattva does not say that the sūtra of Gautama is not authoritative, but explains it away on lines similar to those of the Dāyabhāga. It may be stated here briefly that the Dāyabhāga differs from the Mitākṣara in four main points:—(1) The Dāyabhāga denies the theory that property is by birth, while the Mit. accepts it; (2) the Dāyabhāga lays down that the right to inherit and the order of heirs is determined by the principle of religious efficacy, while the Mit. school holds that blood relationship is the governing factor in this matter; (3) the Dāyabhāga holds that members of a joint family (such as brothers or cousins) hold their shares in quasi-severalty and can dispose of them even when there is no partition by metes and bounds; (4) the Dāyabhāga holds that even in an undivided family the widow succeeds

1001. On मनु IX. 209 वेदादिभिः says 'यस्मिन् विद्वानवधनस्येवते । तदा सोऽसौ पुत्रो चोभयोरिति । ... सर्वे विद्वान्मृग्यमानाः सत्यपुत्रकत्वादिभावरम् ।' on मनु IX. 156 he says 'तथाप्युक्ते सवर्णापुत्रोऽप्यपुत्रो न लभतेति चेदामिति । तद्वैतद्वयम् । जलैरप्यन्यमन्य-त्वात् । उत्पन्नो वार्यस्यापि-पात्रार्थ इति ।

1002. कञ्चिजगैवेति (जन्मनैवेति ! ) च जन्मनिवधनत्वात् विद्वानुधसम्भन्धस्य पितृ-नरन्धस्य च सत्यकारणत्वात् परस्परार्थं वर्णनम् । दायभाष । 20 p. 13. अत्रुक्त and some of the commentators of the Dāyabhāga refer these words to the sūtra of Gautama which they read as 'उत्पत्तिवार्ध रसमिवाज्ञानेनैवाचार्यः' . मनु विद्वान्तरादां 'उत्पत्तिवार्ध सानिवाज्ञानेनैवाचार्यः' इति गौतमवचने तदपि पितृसन्धौपत्येऽनुजगच्छेत्तुल्य-मोक्षनिमादसम्भन्धेन, यस्मात्पितृव्येन जनकधने पुत्राणां सानिवाज्ञाने द्वयोः लभेत् सत्य-सम्भन्धौपाचार्यो नरन्धते । दायभाष । p. 162. This is quoted almost in the same words by the sv. p. 414 and on p. 415 the sv. p. appears to hold that the explanation of the दायभाष quoted above relates to the sūtra of Gautama. अतश्च उत्पत्तिवार्धरसमित्येति गौतमवचनस्य यस्मिन्पुत्रावधनस्येवत्वात् पारम्परिको-त्पत्तिस्त्वप्युक्तं वाच्यमानं कृते तदपि स्पष्टमेव । sv. p. 415; vide sv. p. 426 for an elaborate refutation of the Dāyabhāga passage (quoted above) and other passages that follow.

to her husband's share on his death without male issue, while the Mit. school holds that she does not do so.

Various attempts have been made to explain why in Bengal alone the laws of succession and inheritance should diverge materially from the laws prevailing in the rest of India. In two learned papers 'on the origin and development of the Bengal school of Hindu Law' contributed to the *Law Quarterly Review* (vol. XXI for 1905 pp. 380-392 and vol. XXII for 1906 pp. 50-63) Mr. Justice Saradacharan Mitra tries at some length to advance a theory of his own: 'The commercial spirit of the newly formed nation in the eastern corner of the Indian peninsula with its deltaic character and nearness to the sea, the new ideas which other nations trading with it were bringing in every day, the necessary admixture of races in some parts of the country, the religion of Buddha which for centuries was here the religion of the sovereign as well as of the people and the influence of the Buddhistic *tantras* combined to bring about a law of property dissimilar in material respects from the rules propounded by Brahmanical sages of old and explained and commented upon in the *Mitākṣarā* and the books based on the same'. His idea is that, as Buddhism profoundly affected the position of women and as *tantras* like the *Mahānirvāṇa* subscribed to the exaltation of the feminine element in nature, the ancient law of property, particularly in relation to women, came to be affected and conceptions of individual ownership, of freedom from restrictions on alienation and of the rights of females arose in Bengal which were incorporated by Jñāta-vāhana in his *Dayabhāga*. With the greatest respect to the learned writer, it must be said that the grounds he urges are far from convincing. A thorough examination of his thesis cannot be undertaken here for want of space. But a few remarks must be made. As regards maritime activity the West coast of India was far more in touch with seafaring and commerce with the West than even Bengal, as the mention of the ports of Barugaza (Broach) and Kalliéné (modern Kalyan) by Greek writers, the finding of hoards of Roman coins and the existence of Syrians on the West Coast clearly establish. Buddhism had spread to central and western India as early (if not earlier than) the period when it could have spread to Eastern Bengal and Assam. Sanchi, Bhilsa, Bharhut, the Nasik and Karla caves bear eloquent testimony to the influence of Buddhism in central and western India for centuries before and after the Christian era. Besides as Mr. Justice Mitra himself



admits 'Buddhism had not its own law of property' (Law Quarterly Review vol. XXI p. 388). Buddhist countries like Burma themselves borrowed their laws of succession and inheritance from the Manusmṛti. Viṣṇusvara is far more liberal to women than Jimūtavāhana, who does not allow any woman to succeed as heir unless she is expressly mentioned as an heir in the smṛti texts. The Mahānirvāṇa-tantra treats a sister and stepmother as near heirs and allows even a paternal uncle's widow and son's daughter to succeed; but under the Dayabhāga these are not at all heirs. One branch of the Mītakṣarā school, viz. that of the V. Mayūkha in Western India is far more liberal about the claims of women than any school. The Marumakkatayam and Aliyasantan law in force in some districts of South India and among certain communities like the Nambudri brāhmanas and Nairs go to the other extreme in their regard for women but no one has so far traced that law to Buddhist or Tantric influence. The peculiarity of the Dayabhāga, viz. the principle of religious efficacy is far more remote from rules of affinity given in the Mahānirvāṇa-tantra than the principle of consanguinity espoused by the Mītakṣarā school. Mr. Justice Mitra is wrong in his estimate of the age of Jimūtavāhana. As stated above (on p. 557) Jimūtavāhana relies on authors like Udyota and the smṛtis of Devala and others. It is best to admit that no satisfactory explanation can be given of the peculiar doctrines of the Dayabhāga. They have an indigenous and independent origin and growth.

*Vibhāga* (partition) is defined by the Mit. <sup>1043</sup> as the allotment to individuals of definite portions of aggregates of wealth over which many persons have joint ownership. The Dayabhāga found several faults with this definition, the principal criticism being that it is cumbrous and farfetched to assume that the (joint) ownership of several (sons and the like) is first produced in the entire wealth of the father and then to hold that this joint ownership is subsequently destroyed. Its own definition is: "*Vibhāga* means the indication of the ownership (of one out of many) by the casting of a ball or pebble (on a definite part of the land or cash), which (ownership) arises with

1043. विभागो नाम इत्यसमुदायविषयाजामनेकदाग्राणी तदेकदेशेषु व्यपराधायनम् । मिता. on वा. II. 214, व्यपहारसार p. 212; अपराध p. 729 is almost the same; एकदेशोपलस्येव भूविषयादाहुस्तत्करणं स्वत्वस्य विनिर्दिष्टनामायाभवेन वैशेषिकसंज्ञा-दानहेतुया अन्तर्विधत्तस्य मुद्रिकायादिना व्यञ्जनं विभागः । विशेषेण भञ्जनं स्वत्वज्ञापनं वा विभागः । द्वाव भाग I. 8-9, p. 8.

reference to a portion only (of the heritage of land and cash), but which is indefinite because it is not possible (for one man) to deal specifically with a particular portion (of the heritage) since there is nothing to show for certain what portion belongs to whom". The *Dayabhāga* denies that ownership jointly arises in all co-sharers (before partition) over every portion of the heritage and states that it arises in portions of it but there is no certain indication to show which part belongs to whom and that the portion of each is made definite and ascertained by partition effected by casting a ball or pebble on a portion (saying 'this is A's exclusive portion' etc.). The *Dayatattva*<sup>1044</sup> (p. 163) criticizes this definition. If before partition each of the co-heirs has ownership in part only of the entire heritage, what assurance is there that the allotment of a part to one co-heir by means of casting a ball will be as to the same portion over which his ownership arose before the partition? The *Dayatattva*, though differing<sup>1045</sup> from the *Mit.* as to the doctrine of ownership by birth, agrees with it as to the definition of *vibhāga*. The differing definitions of *vibhāga* given by the *Mit.* and the *Dayabhāga* lead to different results. Under the *Mit.* when there is a joint family of father and sons or grandsons, all these are coparceners and the ownership of the coparcenary property is in the whole body of coparceners i. e. there is unity of ownership while the family remains joint, no coparcener can say that he is owner of a definite share, one fourth or one fifth etc. A coparcener's interest is fluctuating, is capable of being enlarged by deaths and is liable to be diminished by births. It is only on partition that a coparcener becomes entitled to a definite share. On the other hand according to the *Dayabhāga* there is no ownership by birth, the sons on the father's death constitute a coparcenary but the ownership of the family property is not in all the sons as a body. Every son takes a defined share, the moment the ownership of the father ceases (owing to death etc.). The share so taken does not fluctuate with births and deaths. The sons are coparceners in the sense that their possession of the property

1044. तत्र विभागस्तु सम्बन्धवन्तरसद्भावेन बुद्धिरप्यदाहृत्यपक्षेपः—मुद्रिकापातादिना अमुकरूपेदमिति विशेषेण भजनं स्वातन्त्र्यादयमिति वदन्ति तत्र समीचीनम् । तत्र अल्प स्वार्थं तद्वैध मुद्रिकापात इति कार्यं वचनाभावाज्जिज्ञेयः । दापतत्त्वं p. 163.

1045. वस्तुतस्तु पूर्वस्मान्निस्तत्त्वोपरि सम्बन्धाविशेषात् सम्बन्धिनां सर्वधनप्रभृतस्वत्वस्य मुद्रिकापातादिना प्रादेशिकस्वावस्थावस्थापनं विनापि । एवं हस्तधनवत्स्वतोपाद्विना-  
भापि कल्पयेत् । दापतत्त्वं p. 163.



Inherited from the father is joint i. e. there is *unity of possession*, though there is no *unity of ownership*.

According to the Mitākṣarā sons take by birth an interest in ancestral estate. Suppose A is sole owner of an ancestral estate and has no issue. In that case there is no coparcenary. But the moment a son is born to him, a coparcenary is started. That is, under the Mitākṣarā the birth of a son starts a coparcenary. Under the Dāyabhāga there is no coparcenary between father and sons as the latter acquire no rights by birth even in ancestral property but it may subsist between brothers or uncles and nephews. Under the Dāyabhāga, the *death* of a man may start a coparcenary among his sons (who will be brothers).

Partition has two senses, (1) division by metes and bounds and (2) separation or severance in interest. Under the Mitākṣarā it is possible to have partition in both these senses. The members of a coparcenary may define, at a particular moment, the shares that each would be entitled to; but the actual division of property by metes and bounds may be postponed to a future date and in the intervening period they may enjoy the property in common as before. This is clearly brought out by the Vyavahāramayūkha<sup>1046</sup> when it says "even in the absence of joint (family) property severance (of interest) takes place also by a mere declaration in the form 'I am separate from thee'; for severance is merely a particular mode (or state) of the mind and this declaration merely manifests that (state or mode of the mind)". The S. V. (p. 347) has a similar passage. It is here stated that an unequivocal declaration of intention to separate effects the severance of a member from the joint family and that it is not absolutely necessary that there should be any joint property or that the property be divided by metes and bounds. This last follows as a matter of course when there is a severance of interest. This proposition has been accepted by the Privy Council<sup>1047</sup> and this passage of the Vyavahāra-

1046. दण्डसामान्याभावेपि त्वत्तोहं विभक्त इति व्यवस्थानाच्चेत्यापि भवत्येव विभागः । बुद्धिविशेषनाकमेव हि विभागः । तस्यैवसामान्यजिज्ञेसे व्यवस्था । अथ. म. p. 24; अनेन ज्ञावते परिभाषा विना सङ्कल्पनाच्चेत्यापि विभागसिद्धिः । म. वि. p. 347.

1047. Vide *Pandit Suraj Narain v. Iqbal Narain* 40 I. A. p. 40 (=15 Bom. L. R. 456) for this proposition and *Soundararajan v. Arunachalam* 39 Mad. 159 (P. B.) at pp. 174-175, 183 and *Girjabai v. Sadashiv* 43 I. A. 151 at p. 160 (=18 Bom. L. R. 621) for citation of the above passage of the V. Mayūkha.

mayūkha has been quoted in several cases. What constitutes an unequivocal declaration of intention to separate has as usual given rise to a good deal of case law which has to be passed over here. Under the *Dāyabhāga* heirs succeed on the death of the previous owner in certain definite shares and therefore partition has ordinarily only the first sense viz. assigning to the coparceners specific portions of the property inherited. Another way of separating a member<sup>1048</sup> is also mentioned by *Manu* IX. 207 and *Yāj.* II. 116, viz. that when a member of the family is able to fare for himself and does not desire to have a share in the family property, he should be separated by giving him some trifle (as a token). The *Mit.* adds that the trifle is given as a piece of evidence to prevent his sons claiming a share later on.

The principal matters to be discussed under *Dāyabhāga* or *Dāyabhāga* are, as stated by the *Saṅgraha* and the *Mit.*, four, viz. the time of partition, the property liable to partition, the mode of partition and the persons entitled to partition<sup>1049</sup>.

*Time for partition.* The evolution of the son's right to demand a partition has been a process of ages. It would not be out of place to say a few words on this topic here. In most primitive societies where the patriarchal family system prevailed, the father had absolute power over the son, it was the son's duty to obey the father, alienation of family property was not allowed, the father had power over the acquisitions of all persons including the son and women were incompetent to hold property. Faint traces of these can be detected in the Vedic literature. The legend of Śunahṣepa narrated in the *Ait. Br.* (33. 1 ff.), where we are told that Ajigarta sold his son for being offered as a victim to Varuṇa, that Viśvāmitra adopted Śunahṣepa as his son, though he had already a hundred and one sons, and that he cursed and disinherited his fifty sons for their disobedience to

1048. शक्रयानीहमानस्य किञ्चिद्दत्त्वा पुष्कं क्षिप । वा. II. 116 on which the *Mitā.* says 'समुज्जादीनां दायनिवृत्ता मा दृष्टिः', *स्य.* २, p. 449 notes that *प्रकाश* explained वा. II. 116 and *समु.* IX. 207 differently (taking *अनीहमानस्य* as meaning 'who does not work though able to do so') 'प्रकाशकारस्तु यो भाविषु धनार्थं व्यापृतेषु यमादालस्यादिना नेहेन न व्यापिषेत् सताप्ये न कुपेत् स्वकर्मणा स्वन्दापारेण शक्रः सताप्यकर्मणि क्षमोपि सन् स स्वकादेवस्तु स्वन्दापारजनितद्वयाद् बहिः कार्यः किञ्चिदुपजीवनं दत्त्वा दूतधनमाजयानीकस्वीय इति ॥ अपराकं p. 719 gives both these meanings.

1049. पश्चिमतकाले यथा महत्याः चैव किपतेपि च । पाहमस्य च दूरपस्य यथाशब्धं पश्यते । संसर्ग प. by *सुवृत्तिच.* II. p. 253, *स. वि.* p. 349, इदमिह निरूपणीयम् । करिम्-नकाले कार्यं कार्यं केचन विभागाः कर्तव्ये इति । *मिता.* १३ वा. II. 114.



his order, indicates that in the days of the Alt. Br. it was believed that in hoary ages long before it, the father's power over his sons was absolute. But a caution is necessary. It is possible to over-emphasize the legend of Śunahśepa; it has to be remembered that it is a mere legend and that the Alt. Br. itself shows that the conduct of Ajigarta was condemned as most unworthy of a decent man even according to the legend.<sup>1030</sup> In modern times there are rare instances where parents insure their children and then poison them or maim them for earning the insurance money. But no one says that this is usual or that modern law allows it. In Rg. I. 117. 17 it is stated that the eyes of Rjraśva were put out by his father because the former gave a hundred rams to a she-wolf. This is a solitary instance and it is probable that the verse has some esoteric meaning or refers to some terrestrial or celestial phenomenon. In the Kathaka Samhita XI. 4 it is said "the father rules over the son" (*pitṛ putrasyaśeṣa*). But it must be said that ideas about the father's absolute power over the sons lingered on in historic times. The Nir. (in III. 4) puts forward the argument of some predecessors that daughters did not succeed to the father's wealth because women could be donated, sold or abandoned and not men, while others said that males also were liable to the same treatment as evidenced by the story of Śunahśepa.<sup>1031</sup> Vasīṣṭha (XV. 2) states that<sup>1032</sup> father and mother have power to make a gift or sale of the son or to abandon him. We saw above (n 1035) that Manu stated that a son's earnings belonged to his father. The Āp. Dh. 8. (II. 6. 13. 10-11) emphatically says that the right to give away or sell one's child is not recognized and that the word "sale" used in connection with a bride is used only metaphorically. About the word "sale" in relation to marriage vide H. of Dh. vol. II. pp. 503-506.

On the other hand even in the Rg. we find that sons divided the father's property during his lifetime when the father grew old. "O Agni! men worship you in many places in various ways; they take (from you) wealth as from an aged father"

1030. स होवाच क्षुनःक्षेपे यः सकृत्पापके कुर्वात्कुप्येदितस्ततोऽपरम् । नापामाः क्षौद्रान्मयापादस्तथैव तपः कृतमिति । ऐ. ब्रा. 33. 3.

1031. क्षीणो दानविक्रयानि सर्वा विद्वन्ते न हंसः । हुंसोपदिष्टो हौनःक्षेपे दुर्लभात् निवृत्तः III. 4.

1032. तस्य (पुरुषस्य) वदानविक्रयत्वात्तु नावयितरो यमवतः । बसिष्ठ 15. 2; दान क्रमधर्मव्यापारवत् न निवृत्ते । आप. ध. सू. II. 6. 13. 10.

(Rg. I. 70. 5).<sup>1053</sup> In the Ait. Br. (22. 9) the story of Nābhānediṣṭha<sup>1054</sup>, the youngest son of Manu, shows that the elder brothers divided all the father's property among themselves, and excluded Nābhānediṣṭha during the father's lifetime apparently without any protest from him or in spite of it. In the Tai. S. III. 1. 9. 4-5<sup>1055</sup> the version of the same story is different, since it is there said that Manu himself divided his wealth among his sons and did not give any share of the paternal wealth to Nābhānediṣṭha who was away at a teacher's house as a vedic student. In the Gopatha Brāhmaṇa (IV. 17) it is said "therefore in their childhood sons subsist on their father, while in his advancing years the father subsists on the son". In the Śat.<sup>1056</sup> Br. (S. B. E. vol. 44, p. 157) we read "whence in early life the sons subsist on the father...whence in later life, the father subsists on his sons". In the Kausitaki Br. Upaniṣad (II. 15) after describing the symbolical handing over to the son of all his physical and mental powers by a father who is expecting death it is said that if after this rite the father recovers he has either to remain under the son's dominion or go out as a wanderer (*a samyājān*).<sup>1057</sup> From some of the above passages, it appears that in rare cases sons divided paternal wealth even during the lifetime of the father and against his will. The remark of Dr. Jolly that "it may be unhesitatingly set down as a fact that in the earliest period of Indian Law, partition of property was an entirely unknown proceeding" (Tagore Law Lectures p. 90) goes too far and is not fully warranted by Vedic texts. Just as the Tai. S. (III. 1. 9. 4)<sup>1058</sup> narrates that Manu distributed his wealth among his sons, it also speaks of the eldest son being established with ancestral

1053. नि त्वा नरः पुत्राः सपर्यन्तितुर्न किञ्चिद् देदुं भरतः । का. I. 70. 5.

1054. नाभानेदिष्ठं वंसति नाभानेदिष्ठं वै मानवं ब्रह्मचर्यं वसन्तं ब्रह्मते निरभजत् सोऽब्रवीत्स किं मह्यमभक्तैरेवमेव निहायममवृत्तिरामिषधुर्वत्तमग्राह्यायेतर्हि पितरं पया निहायोऽयमवृत्तेत्येवाचक्षते स पितरमिषावतीतं वाय मन्त्रे मन्त्राभाधुरिति तं पितावतीरन्ना पुत्रक तदाधुराः &c. । तै. जा. 22. 9 (V. 14).

1055. अतः पुत्रेभ्यो द्वावं अभजत् नाभानेदिष्ठं ब्रह्मचर्यं वसन्तं निरभजत् सोऽब्रवीत्कथा या निरभापति न या निरभाहमिषमवीत् । तै. सं. III. 1. 9. 9.

1056. तस्मात्पूर्ववत्से पुत्राः पितरमुपजीवन्ति । ...तस्मात्पुत्ररवत्से पुत्रोपजीवतीति । शतपथ XII. 2. 3. 4.

1057. स पद्यमदः क्वात्पुत्रस्यैवर्न पिता वसतपरि वा जयेत् । का. उप. II. 13.

1058. ब्रह्मपुत्रिणे तद्वन्ति किद्वेषाव दीर्घमासमिति प्राजापरायमिति ब्रूयासेनेद्दे ज्येष्ठं पुत्रं निरवसापयदिति तस्माज्येष्ठं पुत्रं धनेन निरवसापयति । तै. सं. II. 5. 2. 7.



wealth. The Āp. Dh. S. ( II. 6. 14. 6 and 10-12 ) refers to both these passages of the Tai. S. but concludes that equal division among sons is the proper mode and that giving a major part of the estate to the eldest alone is forbidden by the *sāstras*<sup>1059</sup>. These lead to the conclusion that equal distribution among all sons was believed to be the rule and giving the major portion to the eldest son was an exception (and a rare case) even in the Vedic age. The Ait. Br. ( 19.3 ) speaks of the right<sup>1060</sup> of Indra to primogeniture ( *jyaisthya* ) and pre-eminence ( *śraisthya* ). This right of the eldest son to special treatment at the time of partition persisted in the times of Manu ( IX. 112 ff ) and Yāj. ( II 114 ) also and even in modern times it is recognized to some extent in the case of impartible estates and even in ordinary families on the ground of custom or from the nature of the grants made by the former Governments or the British Government (such as Jaghirs and Saranjams). Both Kent. and Kat. declare that customs of countries, castes, villages and groups varying rules of partition and inheritance should be enforced by the king<sup>1061</sup>. Dr. Jolly ( *ibid.* p. 98 ) further relies on the fact that the Āpastamba-dharmaśūtra mentions no other kind of partition than that made by the father. But this is far from conclusive. Āpastamba was a great purist and idealist. He ignores several matters which are wellknown to have existed long before his time. For example, he takes no notice of the several kinds of secondary sons and he does not allow a brāhmana to take up a weapon even for examining it except when he is murderously attacked ( I 10. 29. 7-8 ), while Manu ( VIII 345-349 ), Gautama VII 6 and 25 and others allow a brāhmana much greater latitude. Therefore Āpastamba's silence cannot lead to the positive conclusion of the absence of any other method of partition. As a matter of fact, Gautama ( 15. 19 ) who is generally regarded as prior to Āpastamba states that brāhmanas that had separated from their fathers against the latter's will were not fit to be

1059. उपैतो दायावु इत्येकः । ... तच्छास्त्रविधिनिषिद्धम् । मनुः पुत्रेभ्यो द्वावं यदभज-  
दित्यभिधीयन् श्रूयते । अपाणि तस्मादप्येवं पुत्रे चलेन निरवसादकस्यैकचतुष्टये । आप. ध.  
सू. II. 6. 14. 6, 10-12.

1060. सोऽज्यकीदृ वृद्धस्यापि दायाव वा द्वादश्यायेनेति तमवाजयत्ततो वै तस्मै द्वाव  
उपैतदाव भैतदायालिङ्गत् । वै. भा. 19. 3.

1061. देशस्य जात्या सङ्गस्य धर्मो नामस्य याणि यः । उचिततत्सर्व तेनैव दायाधर्मो  
यत्कस्ययेत् ॥ अर्थशास्त्र III. 7 (last verse); जात्या q. by वि. र. p. 303 reads  
देशस्य ... सामान्यो भूः । उदितः स्वास्य तेनैव दायाधर्मो यः.

invited for dinner at a śrāddha.<sup>1062</sup> That shows that partition of sons from the father against the father's will was well-known long before Gautama. Dr. Jolly also (Ibid p. 90) relies on an anonymous smṛti text (quoted by the Mit. in its introduction to Yaj. II. 114) which absolutely prohibits the sale of land. But this is irrelevant. The text could not be taken literally when we have seen that sales of land have been taking place for at least two thousand years. All that the text means is that a sale should be clothed in the form of a gift.<sup>1063</sup> Similarly the few smṛti passages that include lands and houses among indivisible properties are to be explained as having in view the fragmentation of a field into small uneconomic plots or holdings or the division of a single small house among numerous co-sharers. It is impossible to believe that the texts meant that houses could never be partitioned among co-heirs. All that we can reasonably infer is that as a general rule such partitions were looked upon with disfavour by society. One may concede that this sentiment continued long after even Gautama and Apastamba and even in the 20th century a Hindu son suing his father for partition incurs great opprobrium.

Apart from the inference to be drawn from some of the Vedic passages quoted above, it follows that partition did take place, though probably rarely, during the father's lifetime and even against his will, as indicated by Gautama's dictum. It is now to be seen what the smṛtis and the medieval writers say about the time of partition. One time was when the father divided the property among his sons during his lifetime as evidenced by the Tai. S. III. 1. 9. 4, Āp. Dh. S. II. 6. 14. 1, Gaut. 28.2, Band. Dh.S. II. 2.8, Yaj. II. 114, Nār. dāyabhāga 4. Another time was after the death of the father (Gaut. 28. 1, Manu IX. 104, Yaj. II. 117, Nār. dāyabhāga 2). The Dāyabhāga<sup>1064</sup> admits only these two times for partition viz. on the cessation of the father's

1062. न भोजयेत् ... पित्रा वाक्यमेव निबन्धनम् । यौ. 15. 15 and 19.

1063. हिरण्यमुद्रकद्वयमेवेति स्थावरं विक्रय्ये यान्ति कुप्यादिभिर्मनुजैः इति स्थावरस्य विक्रयप्रतिषेधः 'धूमि यः यतिरुद्वाति पथं धूमि यच्छति । उभौ तौ पूषकर्मणौ विगतं स्वर्गयामिनौ' इति दानपर्याप्तद्वयमाह । विक्रयेऽपि कर्तव्ये सतिरप्यमुद्रके दत्त्वा दानकर्मण स्थावरविक्रयं कुप्यादिवर्धः । मिता. on Yaj. II. 114. The द्वापल्लव quotes this view of the मिताक्षरा and remarks 'स्तुतस्तु स्थावरविक्रयप्रतिषेधोऽपि निबन्धनधारकविषयः' । Vide n. 882 above.

1064. तदेवं पितृस्वत्वापमम एकः कालोऽपरस्वानपगत एव पितुः स्वाम्ये पितृविच्छयेति कालद्वयम् । द्वापभाष 1. 38; तस्मात्पतितस्तन्निमुद्रकयोपरमेः स्वत्वापमम इत्येकः कालोऽपरश्च सति स्वते तद्विच्छात इति कालद्वयमेव दुक्तम् ॥ द्वापभाष 1. 44.



ownership (by death or renunciation of the world as an ascetic or because he has lost all desires) and during the father's lifetime at his own desire. The V. P. (pp. 429 and 434, 435) strongly criticizes the Dāyabhāga as to these two. Some writers like Jimūtavāhana went so far as to hold that even though the father be dead there should be no partition among the sons during their mother's life<sup>1065</sup>. The Mit. (following Gaut. 28. 1-2) indicates three principal times for partition,<sup>1066</sup> viz. (1) at the father's desire during his lifetime, (2) when the father has lost all desire for worldly goods, desists from sexual intercourse and the mother is past the age of child-bearing, partition may take place at the desire of the sons even against the wish of the father (Gaut. 28. 2, Nār. dāyabhāga 3, Br. S. B. E. 33 p. 369 verse 1); (3) after the death of the father. The Mit. relying on Sāṅkha's<sup>1067</sup> text adds that even though the mother may not be past child-bearing, yet the sons can partition at

1065. मित्रोरिति द्विवचननिर्देशात्सौदर्यपूर्णं पितृव्यविभागोपि मातृव्य एव कार्यः । द्वायभागे II. 5, p. 27. श्रीकृष्ण was constrained to explain कार्यः as वञ्चनः thereby showing that this was only recommendatory. V. P. (p. 436) strongly criticizes this view of the Dāyabhāga pointing out that Manu IX. 104 mentions the father and mother separately and indicates that partition of mother's wealth takes place after her death. Vide द्वायभागे III. 9, p. 60 also 'अत एकस्मिन्काले जीवति विभागो न धर्मः किन्तु उन्मयोरभावे ।'. The द्वायभागे also (p. 170) says मातरि जीवन्तौ सौदराणां विभागो न धर्मः । यथा शकुन्तलिखितौ रिचयभूतं हि कुटुम्बमस्तम्बः पितृव्यतो मातृव्येवमवस्थितायाः ।

1066. निवृत्ते रक्षति मातृजीवति चेच्छति । गौ. 28. 2 (this refers to two times) ; मातृजीवति रक्षति मत्तासु भगिनीषु च । निवृत्ते चापि रमणे पितृवृत्तस्तुते ॥ नारद (द्वायभागे 3). This verse is variously read and explained by the commentators. V. R. (p. 462) notes that Prabhāsa read either निरपेक्षे च रमणे or निरपेक्षे चापि रमणे. The Dāyabhāga (I. 31-33 p. 18) reads विनष्टे कल्पकारणे and explains विनष्टे पतिते अक्षरणे दुष्टाभाधनरहिते. The स्व. व. (p. 433) reads निवृत्ते चापि रमणात् and हस्तापुत्र also read it so (V. R. p. 462). The द्वायभागे (I. 47, p. 24) says दत्तासु भगिनीषु चेति न कदापि किं तु तासांमरणं दानार्थम्.

1067. यथाह शङ्खः अन्तर्गते पितरि रिचयविभागो बृद्धे विपरीतचेतसि रोमिणि च । मिता. on pa. II. 114, मदनमते, पितर्यशस्ते स्पष्टासाङ्ग्येऽऽः पतिकुर्यादन्तरो वा कार्यंज्ञस्तदनुमती न त्वकामे पितरि रिचयविभागो बृद्धे विपरीतचेतसि दीर्घरोमिणि वा उभे एव पितृवृत्तान् पालयेद्विपरीत रिचयभूतं हि कुटुम्बमस्तम्बः पितृव्यतो मातृव्येवमवस्थितायाः । द्वायभागे I. 42, p. 23 (4. 22 शकुन्तलिखितौ and adds अतो न त्वकामे पितरि इत्येवमेव कार्यान्वये पितरि रिचयविभाग इति आन्तलिखितम्. It will thus be seen that the two schools read the passage of Sāṅkha-Likṭita differently. The स्व. मद्रस (p. 60) omits the words कामे दीने &c. The मदनमते has the words कामे दीने ... क्षिन्तव्यम्. The V. R. (p. 460) has the same passage of हारीश (as in the Dāyabhāga) with slight variations, viz. जीवति पितरि दत्ताथानर्थादाननिसर्गविभागमाक्षेपजन्तस्तत्त्वं कामे दीने योषिते आति मते वा उभेऽप्यर्थान्तरम् । हारीश 4. by द्वायभागे I. 42 p. 23.

their desire, even against the father's will if the father pursues an immoral or irreligious mode of life or is afflicted with a chronic disease or is very old. *Nār.* ( *dāyabhāga* 16 ) is similar. It should not be supposed that the *Mit.* holds that there are only three times for partition; according to it there are other times also (as in the text of *Śāṅkha* quoted by it). This is made clear by the *V. P.* p. 434. The *Dāyabhāga* reads the text of *Śāṅkha-Likhita* differently and takes it to mean that as long as the father is alive there can be no partition against his will even if he be very old or suffering from a chronic disease or has not all his wits about him, and that in such a contingency the eldest son or with his consent the next younger brother who is capable may manage the family affairs. The *Dāyabhāga* quotes a similar passage of *Hārita* (which is also quoted by the *Madanaratna*, the *Vyavahāramayūkha* and other digests). On account of the remarks of the *Mit.* some works like the *Madanapārijāta* (pp. 645 ff) speak of four times for partition, viz. during the father's lifetime at his choice ( *Yāj.* II. 114 ), even against his will when the mother is past child-bearing and the father is free from all sexual desires and does not care for wealth ( *Nār. dāyabhāga* 3 ), when the father is old or follows the path of *adharma* or suffers from an incurable disease then even against his will (relying on *Śāṅkha* as quoted in the *Mit.*), and after the father's death. The *V. Nir.* (p. 408) is almost of the same view.

The *Mitākṣarā* is quite clear on the point that the son has an absolute right of partition of ancestral property during his father's lifetime even against the father's wish. The discussion in the *Mitākṣarā* may be briefly set out here. In *Yāj.* II. 120 (latter half) it is stated that in the case of grandsons the partition is according to (or through) the fathers i. e. it is *per stirpes* and not *per capita*. The text of *Yāj.* (*anekapūtrbhāgān<sup>1068</sup> tu pitṛto bhāgahutpanā*) is explained by the *Mitākṣarā* in this way that although sons and grandsons have rights of ownership by birth in the grandfather's property, yet when each of several sons dies leaving a differing number of sons (one leaves two, another three and so on) or when some sons are alive and others die leaving their own sons, then partition takes place *per stirpes* i. e. the grandsons born of a particular deceased son

1068. It may be noted that the *Bālabhāṭṭi* (p. 150) and *V. P.* (p. 449) support the reading अनेकपुत्रकानं तु instead of अनेकपुत्रकानं तु in *यज.* II. 120.



get among themselves the share which their deceased father would have got if living i. e. grandsons appear to get partition of property through the son (their father) and not directly by themselves. On this a doubt arises as follows:—If the father of several sons is separated from his brothers as to the grandfather's property or if the father has no brother and is joint with his father (i. e. the grandfather of the grandson) the grandson cannot demand a share in the grandfather's wealth (since Yaj. II. 120 has been explained as meaning that when the father is dead then the assignment of shares among grandsons is according to the share of the father). Another doubt is:—even if a partition can be had by the grandsons in these cases it will be only if the father so desires. To this the Mit. replies emphatically<sup>1069</sup> that in the grandfather's property the ownership of father and son is wellknown in the world and therefore partition (in the above two cases of doubt) does take place. The Mit. further on expressly says that even when the mother is not past child-bearing and the father still cares for wealth and worldly affairs, partition of grandfather's wealth does take place at the desire of the son even if the father is unwilling. The Mit. makes it clear that the rule of division *per stirpes* is a special rule laid down by the texts (*vācaniki vyavasthā*) for a special case and that in other cases the primary rule of ownership by birth applies. From Manu IX. 209 the Mitākṣarā further draws the inference that even against the father's wish a son can demand partition of property acquired by the grandfather. This is the modern Hindu Law in the Mitākṣarā school generally recognised by the Courts in British India. In *Ajga Narhar*<sup>1070</sup> v. *Ramchandra* a majority of the Full Bench of the

1069. नृदानामपि पुत्राः पित्रानेवंशाहमन्त इति वाचनिकी व्यवस्था । अपुत्रा विभक्ते पितरपि विभागमात्रातुके वा पौत्रस्य पत्न्याह इत्ये विभागो भवति अविभगमे पितरि पितुको पान-  
कल्पनेत्युक्तवत् । अतः वा स्मृतिसमत् पितुरेवैवैवाशङ्किते आह । पूर्वो पिताः (पाञ्च.  
II. 122) ... तत्र पितुः पुत्रस्य च स्वाम्यं लोकप्रसिद्धमिति कृत्वा विभागोऽस्ति ।  
नृनाञ्च पितुरेवैव विभागो नापि पितृभान्दवत् । ... तथा च सरजस्कायां मातरि ससृष्टे  
च पितरि विभागमनिरुद्धवपि पुत्रेच्छया पैतामहद्रव्यविभागो भवति । मित. The  
वाल्मही (pp. 151-152, of Gharpure's edition) very clearly explains this passage.  
The व. प. (p. 460) also says अत्र च पुत्रेच्छया नो जीवद्विभागो पश्चाज्जीवद्विभागः स एवो-  
च्छयापि भवत्यविशेषात् । ... अथ च पुत्राणां विभागः पुत्रपौत्रपौत्रपौत्रैः समो नाजोपस्थितः  
नृपान्निकलेनाधिकारकतः । पुत्रादीनां वचनात्तेषां पौत्रेण विच्छेदानाधिकारस्तु । विदे  
स्मृतिच. II. p. 279 for a similar passage.

1070. Vide 15 Bom. 29, where Telang J., who was great as a Sanskrit scholar as well as a judge, differed from three learned judges. On pp. 45-51 Telang J. gives a very lucid explanation of the words of the Mit.

Bombay High Court held that a son cannot in the lifetime of his father sue his father and uncles for a partition of the family property and for possession of his share therein, when the father does not assent to such a suit, although the son has a right by birth in ancestral property. The other High Courts have dissented from this view of the majority of the Bombay Full Bench and have followed the dissenting judgment of Telang J.<sup>1071</sup>

When the son's right of ownership by birth in ancestral property came to be recognised by such *śruti*s as that of Yāj., it followed as a logical consequence that any person who acquires a right by birth can demand partition and separate possession of his share at any time. It has been already seen that even before Gautama sons separated from their father against his will, but this was condemned by the ages and obloquy and infamy attached to such conduct. Some of the *śruti*s recognised the son's right to partition even in the father's lifetime under great restrictions. More than fifteen centuries passed (from Gautama to the Mitākṣarā) before the son's right to separate from his father during the latter's lifetime and against his desire was clearly, ungrudgingly and emphatically recognized. The Viramitrodaya also clearly recognizes this right of the son. But even among writers that generally follow the Mīt. there were some that could not bring themselves to admit this right of the son. For example, the Madanapārijāta (p. 562) asserts that merely at the will of the son there can be no partition. Under the Dayabhāga, these questions cannot arise, as the son has no right by birth in ancestral property.

This evolution of the son's right to demand partition even during the father's lifetime received a fillip from certain religious sentiments entertained in ancient times. Gaut. (28. 4) remarks that if, instead of remaining united, brothers separate there is increase of spiritual merit (*vibhāge tu dharmavardhah*). Manu IX. 111 states "they (the brothers) may stay united or may stay separate. If they desire an increase of *dharma*; by living separate *dharma* increases; therefore separation is meritorious".<sup>1072</sup>

1071. Vide *Jogul Kishore v. Shib Saha* 5 All. 430 (F. B.), *Rameshwar v. Lachmi* 31 Cal. 111, *Sabha v. Ganas*, 12 Mad. 179, *Digambar v. Dhanraj* 1 Patna 361.

1072. मनु IX. 111 is quoted as यजागतिः by ऋषि. वि. p. 408. The मदनराज regards मनु and यजागति as different 'पुण्यदेवविष्णुकर्मविराजामुत्तम-वेक्षमाणा विमलेदुरितानामुत्तमजायती एव मनु चनेमुर्वा etc.',



This shows that there was an option either to remain joint after the father's death or to become separate. Śaṅkha-Likhita say that brothers may stay together since being united they will prosper (materially).<sup>1073</sup> Br. provides that in the case of members of a joint family that live together and have a common kitchen the worship of gods, Manes and brāhmannas is single for all, while when they become separate such worship will be separately carried on in each house.<sup>1074</sup> Nār. (dayabhāga 37) lays down that when brothers are undivided the performance of religious acts is single for all of them but when there is a partition, the religious acts are separately performed by each. Dharma means here mainly such religious acts as the performance<sup>1075</sup> of the five great daily sacrifices (*pañca mahājñas*). When the family is joint, worship of gods, Vaiśvadeva, honouring of family guests are only single for the whole family and all participate in the spiritual benefits derived from such acts, but when the members become separate, each performs these religious acts separately. Manu III. 67 lays down that each householder has to perform with the *gṛhya* fire kindled at the time of marriage all *gṛhya* rites such as morning and evening offerings, the five great sacrifices and the daily cooking of food. The Saṅgraha seems to have held that *dharma* refers to the performance of *agnihotra*, but the Sm. C. II p. 259 and V. P. (437-438) do not accept this and hold that even when joint any coparcener can perform all *śrauta* and *smārta* rites like *agnihotra* with the help of the undivided joint estate and so *dharma* means only the worship of gods and Manes and the honouring of guests. Vyāsa<sup>1076</sup> also has a verse similar to Nār. and Br.

1073. कामे वसेदुरक्तः संहता वृद्धिमाचक्षते । ब्रह्मसिंहितौ 10 वि. र. p. 458. The *Madhukarā* reads सह वसेयुः and आपयेयुः.

1074. एकपाकेन वसतां पितृदेवहिजाचनम् । एके भवेद्भिक्तानां तदेव स्पष्टं पृष्टे पृष्टे ॥ बृह. q. by अथर्वसंह. p. 719, मय. नि. p. 469, कुल्लुक on मनु IX. 111, इत्युक्त on वी. 28. 4, वि. र. p. 459.

1075. अधीतवेदेषु अधिमानवेदार्थेषु चाग्निहोत्रायसुखानसमर्थेषु च विनाश एव भवति । अथर्वसंह. p. 719; धर्मः पितृदेवहिजाचनजन्यः । उक्तं च तत्रैव संश्लोकारेण । किंरते स्वं विभागेन पुत्राणां वैतुर्कं धनम् । स्वर्गं सति धर्तते तस्माद्भूम्याः पुत्रस्तु क्रिया ॥ मार्कण्डेय-सायनाग्निहोत्रादय इति शेषः । अथर्ववेदे 100. 1 पञ्चमिच. III. p. 259; तस्मात्पञ्चमहा-पञ्चादिधर्म एव धर्मशब्देनात्र आह्वयः । मय. म. p. 438; स्वर्गाविशेषादेराविभक्त्यपेक्षेण यत्कुलं तत्र दद्यादृष्टं कर्मणि सर्वेषां कलभानितम् । द्वादशतम p. 164.

1076. ब्राह्मणां वीज्यैः पित्रोः सहवासो निधीयते । तद्वशात् विभक्तानां धर्मस्तेषां निधीयते ॥ व्यास q. by अथर्वसंह. p. 719, मय. नि. p. 469, द्वादशतम III. 8.

Partition was generally made when all the coparceners were major,<sup>1077</sup> but from Kaut. (III 5), Baud. Dh. S. (II. 2. 42) and Kat. (844-45) it appears that the minority of a coparcener did not operate as a bar to partition. Kaut. (III 5) says 'partition takes place when the persons separating have attained majority; but (the separating coparceners) should keep in the custody of the mother's relatives or those coparceners who are minors or of the elders of the village the share of the minors after all debts of the family are paid off, till the minor coparceners attain majority. The same rule applies to a member (of a joint family) that has gone abroad'. Baud. employs almost the same words. Kat. provides "partition is ordained among coparceners who have attained (years of) understanding of worldly affairs and in the case of males they attain this understanding at the 16th year. The property (share in joint family estate) of those who have not attained years of discretion, being made free from expenses (debts etc.), should be kept (by the other major coparceners) with the relatives or friends of the minor members. The same should be done to the share of those who have gone abroad." This shows that partition could take place even when some members of the family were minors and even a single member could demand at his will a partition of his share as expressly stated by the Dayabhaga (III 16-17), the V. P. and other works<sup>1078</sup>. There is a controversy among commentators whether minority terminated at the beginning or end of the 16th year. Nār. IV. 35 states<sup>1079</sup> that a person is a minor (*bāla*) till the 16th year. From a verse (attributed to Angīras by Mīt. on Yāj. III. 243 and quoted without name by Haradatta on Gaut. II. 6) it appears that one was to be regarded as a *bāla* till

1077. यामप्यवहाराणां विभागः । अयामप्यवहाराणां द्वेषविशुद्धं मातृवन्पुत्रं यामवद्रेषु वा स्थायवेपुरातनवहाराणामपणात् । अथैतान् III. 5; तेषामप्यवहाराणामपणान् सौपचक्राय सुश्लिष्टमाश्लिष्टपुत्रावहाराणामपणात् । बी. ध. II. 2. 42; सौम्यतप्यवहाराणां विभागश्च विधीयते । पुंसां च षोडशे वर्षे जायते प्यवहाराणि । अयामप्यवहाराणां च एते प्यव-विश्रितम् । मत्सेवुर्द्वयमिष्टेषु योदितानि तथैव च । कात्या. 344-345 q. by अपराक p. 722, दाशमल (III. 17 p. 72) and sv. m. p. 460 (last two have verse 345 only). The *विवादचन्द्र* (p. 63) quotes the verse सौम्यतः for the proposition that there is to be no partition with a minor 'बालेन सयं न विभागः सौम्यतः इति वचनात्'.

1078. अथ च पुत्रेष्वपि यो जीवहिमासो पञ्चाशीत्यदिभागः न पुत्रेष्वपि भवत्य-विशेषात् । अथ एव विभागं वक्ष्ये यत्कालावपनेत्येकं — अयामः, इति तदपि सङ्गतम् । अथवा तदनुसन्धितेन विभागभावे तदुत्तरं वन्दुमिष्टेषु स्थायवितानमनुपपन्नं स्यात् । sv. p. 460.

1079. वाद एव षोडशाहर्षालोक्येण इति अर्थः । नारद (वायुदा. 33),



the beginning of the 16th year.<sup>1080</sup> A verse of Kat. appears to hold that minority ends at the beginning of the 16th year; many commentators also hold this view, but several such as Haradatta (on Gaut. X. 48), V. R. p. 599, V. P. p. 263 expressly state that minority ends at the end of the 16th year.<sup>1081</sup> It may be stated that according to Gaut. X. 48-49, Manu VIII. 27, Vas. 16. 8, Visnu Dh. S. III. 65 the king was to guard the property of minors, women and helpless people. In modern times under the Indian Majority Act (Act IX of 1875) the age of majority is 18 (or 21 in certain cases only) except in matters of marriage, dower, divorce and adoption. In these last matters the ancient Hindu Law will apply to Hindus<sup>1081a</sup>. Similarly a partition could be made even though the wife of a coparcener was pregnant. It was therefore that Vas. 17. 41 advised postponing partition till the delivery of the pregnant wives of coparceners, or Yaj. II. 122 and Manu IX. 216 provide for a son born after partition between father and sons.

The next question is what property is liable to be partitioned. A few preliminary remarks on property must be made here. Property is generally divided by most smṛtis into two kinds, *sthāvara* (immovable, such as lands and houses) and *jaṅgama* (movable). For example, Br. (S. B. E. vol. 33 p. 323 verse 17) and Kat. (516) speak of both kinds of property as subjects of pledges or mortgages. There is another classification in Yaj. II. 121 and a few other smṛtis viz. property is of three kinds.

1080. अग्रजिपैतद वक्ष्यामि बालो वारपूतबोधकः । वागवितार्थमर्हन्ति स्त्रियो सोमिय एतच्च ॥ इत्यङ्गिरसस्मृत्याह । मिता. on वा. III. 243.

1081. वाक्यसौ चकारावातः पौत्रावर्षो नयति । इत्यङ्गिरसः on वा. X. 48; पुत्राधिकारे बीधापनः तेषामन्तःपक्षद्वाराणां । आह अभिधीते तेन सप्तदशवर्षाव्याह । वि. र. p. 599: काश्यायनीयि । ... नाभास्यवहारैस्तु- । इति । नाभास्यवहारैः द्वयोपदेयपरिज्ञानविशेष- सङ्गितैः पौत्रावर्षैरित्यर्थः । पौत्रावर्षाधिकारस्य व्यवहारज्ञानमाह । तर्जनीः &c. (आह IV. 33.) । पञ्च. म. p. 263.

1081a. In Bengal minority was held to terminate at the end of the 15th year; vide *Cally Chuen v. Bhuggobutty* 10 Bengal L. R. 231 (F. B.) at p. 240 and *Meethoormohun v. Sourendro* 1 Cal. 108 (F. B.). In Bombay and Madras it has been held to terminate at the end of the 16th year; vide *Shreeji v. Datu* 12 Bom. H. C. R. 261, *Reade v. Krishna* 9 Mad. 391, 397. But see 40 Mad. 923, 929. As the Indian Majority Act does not apply to adoption, it was held in *Rasappa, v. Sidramappa* 43 Bom. 481 that a Hindu widow who was about 15 years old could validly adopt a son, even though a contract by her would have been void on the ground of minority.

*bhū* (land including houses), *nibandha*<sup>1082</sup> (inaccurately rendered as 'corrody') and *dravya* (gold, silver and other movables). Sometimes however the word "dravya" is employed in the sense of all property, whether movable or immovable, as in Br. (*dravya pāṇinīyopāṭṭe jñāpāne śāhūre tathā*) quoted in note 1032 above. Property, according to ancient Hindu Law,

1082. द्रव्यं भूमिं निबन्धं वा कृत्वा लेख्यं तु कारयेत् । आगमिन्नद्रव्यपरिज्ञानाय पाणिनः । याज्ञ. I. 318. The Sm. *Mayūkh* p. 27 states that it occurs in *Yājñ.* also. In *कात्याय.* (852) we have द्रव्यं चैव दासश्च निबन्धो वाः क्रमागतः (q. by अथर्वश्रु. p. 725, नि. ४. p. 304). 'निबन्धो पाणिन्यादिकारिभिः अन्तेषु धर्मासु वा किञ्चिद्वनगर्भे बाह्य-पाशासु च देवतासु वा देवमित्रादि यत्समस्त-पौरुषः । स्तुतिश्च. II. p. 35; निबन्धः आज्ञादी राजादिदत्तं निवतन-पत्रम् । Sm. *Mayūkh* p. 28 and दीपकालिका (reading नियतद्रव्यम्), *दायतत्र* p. 166 states that this was the explanation given by *कात्यायनः*. निबन्धो राज्ञाधिकार्यैकस्मिन् वर्षेभरककुटुम्बरकाद्युपविनि पक्षादिभि देवानामि क्षासनकस्तथा यद् स्तुतिर्देव दीपने तदुच्यते । Sm. *Br.* p. 445.

The word "nibandha" means a periodic payment or allowance in cash or kind permanently granted by a king, a corporation or a village or a caste to a person, a family, a *math* or a temple. The *Mit.* (on *Yājñ.* I. 318 and II. 121) explains it as a delivery or payment of so many leaves (of betel or the like) on each bundle of leaves or so many rupees on each load of merchandise or so many betelnuts on each load of betelnuts; the *Sm. C.* explains it as the wealth to be obtained under the order or direction of a king or other authority that dealers in commodities should pay every year or month a certain amount to a certain *brāhmana* or shrine; the *V. Mayūkha* (p. 28) explains "what is granted by a king or the like, to be obtained a), fixed times from mines and the like" and on p. 131 paraphrases it as "vrtti". *Nibandha* is rendered as *corrody* by Colebrooke in his *Digest*, but as observed by the Privy Council in *Fattahsangji v. Deval Kallanraji* L. R. 1. I. A. 34 at p. 31 it is not a very happy rendering. In *Ghelabhai v. Hargovan* 36 Bom. 94 (at p. 101) the explanation of *nibandha* by the *V. Mayūkha* is construed as conveying that it is not the king alone who can make a grant of a *nibandha* and it is held that the office of a hereditary priest (*yajamāna-vrtti*) is a *nibandha* and ranks as immovable property. *Bombay Regulation V of 1827*, section 1, clause 1 includes hereditary offices among immovable property. *Vide Collector of Thana v. Krishnanath* 5 Bom. 322 at pp. 331-32 (for a discussion of what is included in *nibandha*), *Collector of Thana v. Hari* 6 Bom. 346 (F. B.) at pp. 555-559, *Lakshmandus v. Manohar* 10 Bom. 149, *Jatindra Mohan v. Ghanaashyama* 30 Cal. 366 at p. 271 (for various definitions of *nibandha* and for the view that an annuity in favour of the settlor's daughter for her life and then to her son charged on and payable out of the settlor's estate was a *nibandha*). With *Vijñānesvara's* examples of *nibandha* one may compare an inscription of *śaka* 1088 (1167 A. D.) from the *Roa Taluka* of *Dharwar District* in *E. I. vol.* 30 p. 109 at p. 121 ("the income granted by the dealers in betel leaves: a hundred leaves for one cart load, a hundred for a bullock load, fifty for a man's load").



may be divided into two classes, (1) joint family property, (2) separate property. Joint family property is either ancestral property or property jointly acquired<sup>1083</sup> with or without the aid of ancestral property or property acquired separately but thrown into the common stock (Mam IX 204). The Mit. on Yaj. I. 120 states 'among unseparated brothers, if the common stock be improved or augmented by one of them through agriculture, trade or similar means, an equal distribution nevertheless takes place and a double share is not allotted to the acquirer.' This contains the doctrine of merger of estate by blending. Vide *Shibaprasad v. Prabhu Kumari* L. R. 59 I. A. 331 = 34 Bom. L. R. 1567. Ancestral property (*apratibandha dīya*) is all property inherited by a male from his father, paternal grandfather or paternal great-grandfather, in which according to the Mit. School, the sons, grandsons and great-grandsons<sup>1084</sup> of the person who inherits it acquire an interest *by birth*. Separate property also includes what is called self-acquired property (*svārjita*), which will be discussed a little later on. If a person obtains a share of ancestral property on partition, it has been held that it is his separate property if he has no son, grandson or great-grandson, but if there be any of these then it is ancestral property in his hands so far as he and any of his male descendants are concerned. Under the Dāyabhāga, as the son does not acquire ownership by birth in ancestral property, there is hardly any distinction between ancestral property and separate property so far as the father's powers of alienation are concerned. A few of the outstanding features of the Dāyabhāga system have already been set out above and some may be discussed later.

1083. सामान्यार्थसहचारे विभाज्यते सः स्तुतः । वा. II. 120 ; समवेतैस्तु वत्मानं सर्वं नञ् समोशिनः । तत्पुत्रो विभक्तममाः पितृभागहराः स्मृतः ॥ बुध. ५. by अपराकै p. 727, स्व. नि. p. 424, नि. र. p. 481 ; भातृनामविभक्तानो वत्मानं भवेत्तद् । न तु पुत्रभागे विभक्तं पिता वृत्त्यालक्ष्येन ॥ मनु IX. 215 (= अनुशासनपर्व 105. 13 ).

1084. The Mit. speaks only of the son's and grandson's right by birth in ancestral property and does not expressly mention the great-grandson. But other writers like the author of the *Vīramitrodaya* quoted above in note 1009 mention the great-grandson as having a right by birth and this has been accepted by the courts. The words "ancestral property" have a technical sense viz. it is *pitāmaha* i. e. paternal grandfather's or great-grandfather's property. Vide *Muhammad Hussain v. Kishna Nandan* 64 I. A. 250 where this is made clear. In a recent case from Patna, 23 Patna 599 (F. B.), it has been held that, where a grandfather makes a gift of his self-acquired property to his son (the father), the son or sons of the latter can treat it as ancestral property and take an interest in it by birth unless the gift makes it clear that it was made exclusively for the donee's benefit only.

A person while he is a member of a joint Hindu family under the Mit. and has an interest in joint family property may have separate property of his own acquired in various ways. The different sources of ownership have been already mentioned above (pp. 317 and 548). The different kinds of separate property are mainly these: (1) property taken as obstructed heritage, that is, property inherited from any person other than the father, father's father or father's father's father (such as a brother, uncle etc.)<sup>1065</sup>; (2) a gift of a small portion of ancestral movable property made through affection by the father to his issue (smṛti quoted by Mit.)<sup>1066</sup>; (3) gift or bequest of separate property made by the father<sup>1067</sup> to his sons; (4) gifts and bequests made by other relations and friends and gifts at the time of marriage; (5) ancestral property lost to the family and recovered from a stranger by a member of a joint family with his own efforts without assistance from joint family property; (6) separate earnings and gains of learning or science (*vidyādhana*). A few remarks will be made on some of these in the sequel.

It is a remarkable fact that the smṛti texts on separate property do not expressly mention gifts received from strangers by a member of a joint family as the separate property of that particular member. The only gifts mentioned are those from friends, or those received at the time of marriage (called *audhā-hika* in Yāj. II. 118 and Manu IX 206) or at a *madhuparka* in

1065 A decision of the P. C. from Madras held that property inherited by two brothers living as members of a joint family from their maternal grandfather became joint property in their hands with rights of survivorship. Vide *Venkoyyamm v. Venkataramanayamma* L. R. 29 I. A. 156. See 27 Mad. 300 (F. B.) and 29 All. 667 for the difficulties caused by L. R. 29 I. A. 156. But it may be taken that even in Madras such property inherited from the maternal grandfather will now be held to be the separate property of the two brothers. Vide *Muhammad Hussain Khan v. Kishor Nandan Sahai* L. R. 64 I. A. 250 which explains away (on pp. 264-265) the case of L. R. 29 I. A. 156.

1066 शौर्वभार्याधने योमे दत्तं विद्याधनं भवेत् : औपेत्याश्रयिभानयानि प्रसादो यश्च ऐतुहः ॥ ५: by मित्रा, in Intro. to Ya. II. 114; स्पष्ट. नि. p. 443; नि. १. p. 501 ascribe it to Nārada (it is गारुड, द्वापभार्य ०).

1067. In Bombay, Allahabad and Oudh such gifts by the father of his separate property are held to be separate property of the son or sons. Vide *Jugmohandas v. Sir Mangaldas* 10 Bom. 328, 579. But in Calcutta they are held to be ancestral (*Hazari Mall v. Abaninath* 17 C. W. N. 250) and in Madras it is a question of intention (*Nagalingam v. Ramchandra* 24 Mad. 429.)



honour of a learned man, a priest etc. It is probable that gifts from strangers to a member of the joint family that did not fall within the several classes of separate property mentioned above belonged to the whole family. The concept of the separate property of a member of a joint family was of slow growth. Originally all property however acquired by any member might have been held to belong to the whole family. This is indicated to some extent by Manu VIII. 416, which was (as shown above on pp. 555-556) however interpreted by Śābara, Medhātithi, the Dāyabhāga and others in subsequent times, as meaning that the acquirer (son or wife) had no independent power of disposal though he or she was owner of what was earned by him or her. It is noticeable that so late a writer as Haradatta<sup>1088</sup> relies on this verse of Manu and remarks that while the father is alive whatever is earned by a member, whether learned or not, belongs to the father (on Gaut. 28. 29). The Dāyabhāga<sup>1089</sup> (II 66-72) quotes a text of Kāṭ. (851) "the father gets two shares or half of the wealth acquired by the son" and explains it in two ways. If the son acquires wealth with the help of ancestral funds, the father takes half of it, the acquirer gets two shares and the other sons one share each; if the son acquires wealth without using ancestral funds, the father and acquirer take two shares each and the others take nothing. Another meaning is that if the father is learned he takes half, but if he is not so, he takes only two shares. The V. P. (pp. 444-45) severely criticizes the Dāyabhāga for these remarks. The first inroad on the conception that the earnings of all in the family belonged to the head of the family was made in the times of the sūtras by the recognition of *vidyādharm* as separate property. Manu<sup>1090</sup> IX. 208 (= Viṣṇu Dh. S. 18. 42) states that what one (member of a joint family, a brother etc.) may acquire by his own labour without using (or without detriment to) paternal estate he shall

1088. तत्र ब्रह्मद्वयमपि चैतद् ब्राह्मणिकमेव । नितरि तु जीवति ... विदुषां विदुषा वाऽ-  
विभक्तमार्जितं पितुरेव । भार्या पुत्रश्च ... तद्धनम् ॥ इति मङ्गः । तदुक्तं ०० यो. 28. 29.

1089. तथा पुत्राजितेति धनं पितुर्गृहस्थं द्वाविंशतिभिः पृथ्वातिशङ्कयति चाविशेषभुक्ते ।  
सुव्यक्तमाह कात्यायनः । अथैतरोपदेशो वा पुत्रविशर्जनमाह पितुः । यातापि नितरि नेवे  
पुत्रवृत्त्यभिप्रायिनी । ... तत्र पितुर्गृहस्थपत्नीन पुत्राजितोपकारवापि पितुर्जनकरव पुत्रवर्षा-  
शङ्कामितरेषामेकैकांशिता । अतुपपत्ते तु पितुर्गृहस्थपत्नीनकरवापि कायदेन इतरेषामनंशितम् ।  
यद्वा विद्याद्विदुषां संपन्नस्य पितुर्गृहस्थे विद्यादिनापि ज्येष्ठस्त्वैवधिकदर्शनात्, विद्याद्विदुषद्वय  
जनकतामात्रेण द्वयंशितम् । द्वाविंशति ॥ ६६-७२, pp. 49-52.

1090. अनुशासन 105. 12 closely resembles अनु IX. 208. It is अनुशास-  
नविदुषां तद्धाभिमन्त्रणम् । स्वामीहितस्य तु नाकामो ब्राह्मर्षिः ॥

not share with others if he does not desire to do so, because that acquisition was made by his own activity. *Mam* IX. 206 mentions besides *rityūdhana*, gifts from friends, gifts at the time of marriage and at *mr̥tyupar̥ke* as the separate property of a person. *Yaj.* (II. 118-119) prescribes: 'whatever is acquired by a person himself without detriment to or expenditure of paternal wealth, gifts from friends, gifts at marriage, these are not liable to be divided among a man's coparceners; similarly he who recovers ancestral property lost to the family (and not recovered by the father and others) would not have to share it at a partition with his coparceners nor his gains of learning'. The construction to be put on these words was a bone of contention even before *Viśvarūpa*. The *Mit.* understands that the words 'whatever is acquired without detriment to the paternal wealth' are to be understood as qualifying each of the following four kinds of property.<sup>1091</sup> The result is that if a gift is acquired by a member from a grateful person who was placed under obligation by spending family wealth, if property was acquired by gift from a father-in-law who was paid from the family property some wealth for securing the bride for that member (as in an *Āyura* marriage) or if the property lost to the family was recovered with the help of paternal estate or if a man learnt at the expense of the family and made gains from that learning, then these kinds of properties were liable to be partitioned among all members. The result of taking the first half of *Yaj.* II. 118 as a qualification of the subsequent four kinds of property (as done by the *Mit.*) is that if a man receives a gift from a stranger even without detriment to the paternal estate the gift was liable to be divided among all members. The reason of the *Mit.* is that, if the first half of *Yaj.* II. 118 is not a qualifying clause of the four kinds of property, then the following four kinds need not be expressly mentioned at all. If whatever is acquired by a member himself without

1091. अथ च पितृद्वाराविरोधेन यत्किञ्चित्कथमभितमिति सर्वशेषः । ... तथा पितृ-  
द्वाराविरोधेनेत्यस्य सर्वशेषत्वादथ पितृद्वाराविरोधेन यत्किञ्चित्कथमभितमिति विवक्षितम् । नित्यं, on  
*Yaj.* II. 118-119. The word शेष is used here in the technical sense of *Jai-*  
*minī* III. 1. 1 (*śeṣaḥ parārthatvāt*) on which *Sabara* says 'यस्तु अल्पमेव परार्थस्ते  
वर्ग शेष इति वक्तुः' । विवक्षितम् is opposed to this 'पितृद्वाराविरोधेनापि नैकाद्याविभाग्यमेव,  
आरभ्यसामर्थ्यात्' । अथे तु नैकादिकमेव पितृधनानुपचयान्नित्यमविभाग्यमिच्छन्ति.' On  
*Yaj.* II. 118 the *द्वाराभाष* remarks 'नैकादिग्रहणं पदार्थनाशम्' and again (VI. I. 39  
p. 115) 'तस्मात्तदाधारपक्षोपपत्तान्नित्यं वयं विवक्षेदिति विधिः । सर्वोद्दिष्टं च वाक्येषु  
अवधारणार्थम्' ।



detriment to paternal or joint estate is by itself separate property then the following four will only be particular illustrations of the proposition contained in the first half of Yāj. II. 118. It would be opposed to the usage of *śiṣyas* to say that gifts from friends or gifts at the time of marriage or gains of learning acquired at the expense of the family estate become the separate property of a person and, as to *vidyādhana* acquired from learning at the expense of the family, opposed to the express text of Nār. (dāyabhāga 10) "when one brother maintains the family of another brother who is engaged in studying the śāstras, he shall receive a share of the wealth gained by that study, though he (the supporting brother) be ignorant himself". Further, if the first half of Yāj. II. 118 were taken as a separate and independent clause by itself then it would follow that what is acquired by *prati-graha* (as a gift to a learned brāhmaṇa) without detriment to the paternal estate would be indivisible but the usage of the *śiṣyas* is the opposite of this. That there was such a usage about *prati-graha* is admitted by the Dāyabhāga (VI. 1. 54 p. 121). It must be stated however that this view of the Mit. about the first half of Yāj. II. 118 is not shared by several writers and works such as the Dāyabhāga VI. 1. 8. p. 106, Dipakalika, Viśvarūpa, V. R. p. 501, Aparārka p. 723.

As regards family property lost to the family by the adverse acts of a stranger but recovered by a member with his own efforts without using ancestral estate, certain provisions deserve notice. Manu IX. 209 (= Viṣṇu Dh. S. 18. 43), Br. (S. B. E. 33 p. 371 verse 12) and Kāt.<sup>1092</sup> (866) lay down the special rule that if the father recovers property lost to the family, whether movable or immovable, with his own effort without using joint family funds, he may retain the whole of it as his self-acquisition. The rule of Yāj. II. 119 applies only where the property lost and recovered by one member (not the father) with his own effort and without assistance from joint estate is movable (which then becomes wholly his self-acquisition), but if the property so recovered by one member (who is

1092. अनाश्रितं विपुत्रं स्वशक्त्यामोति यद्धनम् । दानादेभ्यो न तद् दद्याद्विद्यालभ्यं तु यद्धनेत् । व्यास ७. by वि. र. p. 502, स्मृतिसं. II. p. 276, दायभाग VI. 1. 5. p. 106 and VI. 1. 36 p. 113 : स्वशक्त्यापवृत्तं यत् स्वयमासे च यद्धनेत् । एतज्जै विना ह्यनैर्विभक्तं नैव दद्यात्ते ॥ कालिदा. 866 ७. by अपरार्क p. 723, स्मृतिसं. II. p. 280, परा. ना. 111. p. 498.

not the father) is land, then the recoverer gets one fourth of it as his reward (according to Sāṅkha)<sup>1093</sup> and the remainder is divided equally among all members of the family including the recoverer. These rules have been followed in modern times by the British Indian Courts<sup>1094</sup>.

*Vidyādhana* (gains of learning) has undergone the greatest changes of fortune since the earliest times to modern days. It was probably the first kind of self-acquisition recognised in very early times. Though the Āp. Dh. 8. and Baud. Dh. 8. say nothing about it, yet Gaut.<sup>1094a</sup> (28, 28-29) lays down that all members (of a joint family), if not learned, should divide equally whatever is earned by them (by agriculture etc.) but what a learned man himself acquires by his learning he may not share with his unlearned brothers if he so desires. Haradatta says that this applies only between brothers that are joint. Vasistha 17, 51 appears<sup>1095</sup> to give two shares to the acquirer of wealth at a partition among brothers and his rule probably represents a very early stage when the acquirer could not retain the whole of his self-acquisition but got only two shares

1093. एवं च पूर्वजो च वो भूमिकश्चैवदरेष्वप्युक्तम् । यथाभागं भक्त्यन्वये द्वाकां तु तुरीयकम् ॥ इति भट्टनचरने जायायुद्धवृत्तविषयम् । अत्र सर्वे तुरीयांशं गृहीत्वा राजादिभिः सहोद्धतां युद्धीयादृश्यता विषयवृत्तं स्यात् । द्वायत्तम् p. 166 and p. 177. The *Viṭa*. (as printed) reads उद्धेत क्रमम् (which seems to be a misreading for अनाम्) and remarks 'तत्र अने तुरीयांशस्यदत्तां लभते दोषं तु सर्वेषां सममेव' and it requires that the recovery must be with the consent of the other members. Vide मद्. पा. 65† and द्वायभाष. VI. 2, 38-39 p. 120. The *Vi. r.* (p. 496) attributes it to हारीश and remarks 'यच्च संज्ञितायां हारीश पूर्वजो...तुरीयकमिति वाक्यं लिखति स्म नञ् इदृशिमहार्णवकामधेतुकल्पतत्परिज्ञानयथायलिखनादुक्तमेव'. This remark of *Vi. r.* is quoted by the द्वायत्तम् (p. 177) and dissented from, as the *Viṭa*śara and द्वायभाष also this verse. As the verse is stated by the *Vi. r.* as not found in the *परिज्ञात* and as it is quoted in the *महानपरिज्ञात* it follows that the *परिज्ञात* is a different work from the मद्. पा.

1094. Vide for example, 3 Mad. H. C. R. 150 at p. 152-153, 4 Mad. 250 at pp. 259-260 1. *Rajabha v. Trimbak* 34 Bom. 106 at pp. 110-111.

1094a. स्वयमर्जितमर्थेभ्यो वैद्यः कामं न दद्यात् । अर्थेभ्यः सन्ने निभजेत् । गो. 28, 28-29; विद्यामधीते इति वैद्यः । हरद्वज, पाणिनि IV. 2, 39 is 'तदधीते तद्वैद्यः'.

1095. वेन चैषां स्वयमुपाजितं दद्यात् स्वयमेव तरेत् । वसिष्ठ 17, 51 (which reads स्वयमुपाजितं स्यात्). *Viṭa*, on पा. II. 119 and स्मृतिच. II. p. 275 read as above, द्वायभाष II. 41 p. 42 as सहज्यादिर्न, वस. भा. III. 560 'यदुपाजितं'.



in it and the rest of the joint family members took one share each in it. Manu IX. 206, Yāj. II. 119, Nār. (dāyabhāga II). Kāt.<sup>1096</sup> (868) and Vyāsa say generally that *vidyādhana* is not liable to be divided at a partition. Among writers of smṛtis Kāt. contains the most elaborate treatment of *vidyādhana* and of self-acquisitions in general. It will be set out in the sequel. But some of the smṛtis point out that even *vidyādhana* is partible, if learning was acquired at the expense of the family funds (as in Nār. dāyabhāga I0 referred to above) or when the learning was acquired in the family house itself from the father or an elder brother (Kāt.<sup>1097</sup> 874). The Dāyabhāga (VI. 1 42-49) discusses at great length the views of Śrīkara on Yāj. II. 118 and Manu IX. 208 and dissents from them and states his conclusion as follows: A man since his birth depends upon his family for food and maintenance and so if the words "without expending ancestral estate" were literally and widely interpreted, hardly any man can say that no paternal wealth was expended on him and so earnings of whatever kind would have to be deemed to be partible and there would be no propriety or purpose in the words of Manu IX. 208. Therefore it must be understood as done by Visvarūpa that the detriment meant is not the expenditure of food in maintaining a person in the house from infancy, but that when a member acquires estate by his learning or in any other way without giving or spending paternal wealth for acquiring that, then only it becomes his self-acquisition.<sup>1098</sup>

1096. उपपन्नं तु पण्यं विद्यायाः पण्यवैक्यम् । विद्याधनं तु तद्विद्यायाः विभागे न विभज्यते ॥ कात्या. 868 q. by अथर्वक p. 724, कुल्लुक on मनु IX. 206, द्वायभागे VI. 2. 1 p. 122 : विद्यायाः शीर्षधनं पण्यं मौद्गलिकं भवेत् । विद्यायाः काले तत्रत्यं बान्धवैः स्मृति-विधिभिः । पण्यं, q. by अथर्वक p. 725 स्मृतिच. II. p. 274.

1097. वीर्यं वैद्याय नाकामो दुष्टादर्श स्वतो धनतः । पित्र्ये द्रव्ये समाश्रितः न चेत्येन न ददातुम् ॥ कात्या. द्वायभागे 11 : कुले विनीतविद्यायाः आध्यात्मिकं पितृतोषि वा । शीर्षधनं तु पण्यं विभागे न ददुःश्रम्यति । कात्या. 874 q. by स्मृतिच. II. p. 275, परा. म. III. p. 363, ख. म. p. 126. From this verse it appears that Kāt. echoes the views of Bṛ. In the ख. नि p. 447 this verse is ascribed to बृह.

1098. यतो विद्वत्प्राप्तार्थकालेन मन्त्राणां पण्यमोपपन्नं कथनोपपादादुपपन्नं योपपादादि-रूपस्य वर्जनाधीनम् ॥ अत एवास्मिन् विद्वत्पण्ये पितृद्रव्यं दूरात् यदि योगाजितं धनं तदा उपपन्नायासायाः वैशेषिकवदेवोक्तं न तु मन्त्राणां पण्यमोपपन्नत्वेन तस्य कथनोपपादादिविद्वत्पण्य-स्वत्वेन ॥ द्वायभागे VI. 1 47 and 49 pp. 115-116. The printed विद्वत्पण्य has no corresponding passage.

<sup>5</sup> Kat. ( 867-873 ) defines<sup>1000</sup> and illustrates vidyādhana as follows :—

That wealth is said to be the gains of *vidyā* which is acquired by means of learning received from another while subsisting on food furnished by others, when a matter ( a doubt or difficult point ) has been placed ( before an assembly of learned men ) with a wager, whatever is gained by ( the display of ) one's learning is known as *vidyādhana*, which is not divided at a partition. What is acquired from a pupil ( i. e. by following the profession of teaching ), by performing the work of a priest at a sacrifice, by propounding a question, by solving a doubtful point, by exhibiting one's knowledge, by disputation with a rival, what is gained by deep learning—all these are declared to be *vidyādhana*, which is not divided at a partition. The same is the rule in the case of artisans and as to whatever is obtained ( as a reward ) over and above the proper price of an article ( which surplus becomes the self-acquisition of the member selling it ). After vanquishing a rival in a wager whatever is obtained by ( superior ) knowledge should be known as *vidyādhana* and it is not liable to be partitioned. This is the view of Behaspatī. What is earned by an assertion of one's learning, what is obtained from a pupil ( i. e. by teaching ) and what is acquired on the analogy of priests officiating at a sacrifice—all these are known as *vidyādhana*, according to Bhṛgu. What is obtained by the superiority of one's learning and from a sacrificer and from a pupil—all this is declared to be *vidyādhana*; acquisitions other than these are common ( i. e. jointly owned ) with others.

Kat. distinguishes between *kauryadhana* ( reward given by the king or a master when pleased with a soldier or servant

1000. परमकोपयोगेन विद्या आमान्यतस्तु वा । तत्रा मानं धनं बहु विद्यानं न तु यत्नते ॥ यत्नतस्तु तु यत्नार्थं विद्याया यत्नपूर्वकम् । विद्याधनं तु तद्विद्याद्विद्योने न विद्यतते ॥ विद्यादा-  
निवृत्तः पञ्चासत्सिद्धयन्तर्निर्णयः । स्वज्ञानशान्तिनाह वादाङ्गत्वं मायवन्मायकं यत् । विद्याधनं  
तु यत्नादुत्पिद्यते न विद्यतते । शिष्टिपण्ये हि धर्मोऽयं मूलपाद्यव्यापिकं भवेत् ॥ परं निरस्य  
यत्नार्थं विद्याया यत्नपूर्वकम् । विद्याधनं तु तद्विद्याया विद्यायर्थं बुधस्त्विति ॥ विद्यामतिज्ञया तत्त्वं  
विद्यादानं वा यत्नतेत् । अतिज्ञानादेनं यत्नस्यमेतद्विद्याधने भूयः ॥ विद्यामलङ्घने चैव वाग्यतः  
विद्यततत्तमा । एतद्विद्याधनं याहुः सामान्यं यद्विद्यया ॥ कात्या, 867-873 ॥ by अपराधं  
p. 724, वि. १, p. 302, त्र. म. p. 125, च्छ. वि. (pp. 444-45) quotes all  
except परं निरस्य, the first is quoted by the मीमा, on वा. II. 118-119; all except  
the first and last are quoted in the द्वापमान VI. 2. 1-14 which remarks at the end:  
तद्व्यमर्थं यदा यदाचिद् विद्याया यत्नस्यमर्थकरस्य तत् । मेनेर्यात् । यद्विद्यार्थं तु कात्यायनेन  
विस्तरणोक्तं श्रीकण्ठविष्णुनिरासार्थम् । अतः स्वज्ञानरूपापनादिना यत् नतिमहत्त्वार्थं तद्वि-  
विद्याधनमेव विद्यायैव विदुषेऽतिशयदानम् ।



who putting his life in danger did an act of valour) and *dhvajdhṛta* (what is recovered in a battle after putting one's life in danger of death and after putting to flight the army of the adversary). Nār. (dāyabhāga 6) and Br. (S. B. E. vol. 33 p. 381 verse 78) appear to put both under *kuryadhana*. Kāt. divides the *bhāryādhana* of Nār. and Br. into two, viz. *kaupīyaka* (what is obtained at the time of marriage with a maiden of the same caste) and *cauāhika* (wealth that comes with one's wife). So it is the same as the *cauāhika* (of Manu IX. 206) and the *audāhika* (of Yā. II. 118). Vyāsa mentions<sup>1100</sup> a limitation that even wealth acquired by valour does not become the exclusive property of the acquirer if he used a horse and weapons belonging to the joint family; in such a case the acquirer gets two shares and the other members of the family one share each.

In modern times vidyadhana has been a fruitful source of litigation. The first verse of Kāt. quoted above has been cited in several cases such as *Durga Dāt v. Ganesh Dāt* 32, AIL 305 at p. 312, where it is said that Kātyāyana's definition of vidyadhana is not exhaustive, but only illustrative (the same is the view of the Dāyabhāga).

The leading cases that discuss the texts and lay down propositions are noted below<sup>1101</sup>.

Two propositions were well established by the cases, viz. (1) that money earned by a member of a joint Hindu family by the practice of a profession requiring special training was joint family property, provided such training was imparted at the expense of joint family property; (2) that gains made by personal labour and without the use or help of joint family funds by a member of a joint Hindu family, who was maintained out of joint family funds and received no more than an elementary or ordinary education suitable to his position as a member of that particular family were the self-acquisitions of such member. But all doubts and disputes are now set at rest by the Hindu

1100. साधारणे समभिस्व पतिविरुद्धनायकम् । औषादिनामोति धनं क्षात्रराज्य  
भागिनः । तस्य भागद्वयं देवं देवास्तु सम्भागिनः ॥ यथासं २. by अपराज्य p. 725. यत्र. नि.  
p. 446. वृ. न. p. 127.

1101. *Chalukonda Alayam v. Chalukonda Ratnachalam* 2 Mad. H. C. R. 56; *Bai Manchha v. Narotamdas* 6 Bom. H. C. R. [A. C. J.] 1; *Pantien v. Pantien* L. R. 41 A. 409; *Lakshman v. Jannabai* 6 Bom. 225; *Krishnaji v. More* 15 Bom. 32; *Metharam v. Rewachand* 45 I. A. 41 (= 45 Cal. 666); *Gokulchand v. Huhanchand* 48 I. A. 162.

Gains of Learning Act (Act XXX of 1930) which provides that, notwithstanding any custom, rule or interpretation of Hindu Law, no gains of learning (i. e. education whether elementary, technical, scientific, special or general and training of every kind which enables a person to pursue any trade, industry or avocation), whether made *before* or *after* the commencement of the Act, shall be held not to be the exclusive and separate property of the acquirer merely by reason of his learning having been wholly or in part imparted to him by any member, living or deceased, of his family or with the aid of the funds of the joint family or of any member thereof or by reason of himself or his family having, while he was acquiring his learning, been supported wholly or in part by the joint funds of the family or the funds of any member thereof. This Act is thus retrospective.

All property of a joint family other than the separate property of individual members is liable to partition, i. e. as stated by Kāt., property of the grandfather, of the father and whatever is acquired by each member (by the use of joint funds<sup>1102</sup> is so liable). Separate property is said to be impartible (*anibhājya*) on account of the source from which or the manner in which it is acquired. But there are certain kinds of property which from their very nature are not allowed to be partitioned and have to be enjoyed in common or by turns.

The oldest provision on this point is contained in Gautama<sup>1101</sup> (28. 44-45) that water (well), (property set apart or destined for) pious uses or sacrifices and food prepared (for festivals etc.) shall not be divided nor women connected with individual

1102. पैतृमहं च पित्र्यं च वृत्तिकारित्वमभित्तम् । दायादानां विभागे तु सर्वमेतद् विभज्यते \* कात्या. q. by दायादान VI. 1. 1 p. 103, स्मृतिच. II. p. 273, एव. नि. p. 446, परा. मा. III. p. 556 'स्वयमभित्तं पित्र्यादयिभक्तदायापयचोर्ध्व' स्मृतिच.

1103. उदकयोन्येनकृतान्नेष्वविभागः । स्त्रीषु च संयुक्ताः । मी. 28. 44-45. This applies, acc. to Haradatta, to the concubines not only of the father but also to those of any member of the joint family. Vide Nagibai v. Monghibai 53 I. A. 153, 159-160 where Gaut. and Mīl. are quoted.



members of the family (as concubines). Śāṅkha-Likhita<sup>1104</sup> forbid the partition of a building,<sup>1104a</sup> water vessels, ornaments and clothes that are daily worn by the respective members. Similarly Uśanas says<sup>1105</sup> "there is no partition among agnates even up to the thousandth generation of what is acquired by officiating as priests, of a field, of vehicles, prepared food, water and women". Prājāpati (quoted by Sm. C. II p. 277) asserts that there is no partition of houses, fields and temples (*yājña*), gifts made through favour by the father or mother. The prohibition against dividing a house or a field is explained in three ways. The Mit. on Yāj. II. 119 explains that it has in view a brāhmana's son from a wife of the kṣatriya or vaiśya class, when the brāhmana acquired it as a religious gift made to him for his learning, since Br. (S. B. E. 33 p. 374-verse 30) states "land bestowed<sup>1106</sup> as a gift on a brāhmana should not be given to the son (of the brāhmana) from a wife of the kṣatriya caste; even if the father gives it to the son of the kṣatriya wife, after the father's death, the son of the wife of the brāhmana class

1104. न वस्तुविभागो नोदपात्रालङ्कारोपयुक्तवाससाद् । अङ्गुलिखिते न. by अपरार्क p. 726, द्वायभागे VI. 2. 29 p. 127, स्व. म. p. 129, नि. र. p. 503. This śūtra is variously read. The द्वायभागे reads न वस्तुविभागो नोदकपात्रालङ्कारोपयुक्तकी-वाससासाधो भचाररक्षणो विभागश्चेति प्रजापतिः, while अपरार्क reads न चाग्नि विभा-नोदोदपात्रालङ्कारोपयुक्तकीवाससाधोपयुक्तवाससाधो विभागश्चेति प्रजापतिः; the नि. र. reads mostly like the द्वायभागे 'न ... नोदपात्रालङ्कारोपयुक्तकीवाससाधो भचार-रक्षणो विभागश्चेति प्रजापतिः' and explains उदपात्रं स्त्रीधारिभाजनं, अलङ्कारीकृतं एव, उपयुक्तमुपयुक्तं तैरेकोपयोगिविषयवाससाधो न विभाग इति यावत् । अथ भचाररक्षणो जं भचाररक्षणोपात्तः । मेधा on मनु IX. 219 seems to have this śūtra in view. If the reading is अनुपयुक्त it means 'what is of no use (as books to an ignorant member)', acc. to श्रीहृण, स्त्री refers to women other than female slaves.

1104a. Compare sections 2 and 4 of the Partition Act (IV of 1893) about the division of a house and Vaman v. Vasudev 25 Bom. 73.

1105. अविभागे सगोत्राणाम सव्यकुलादपि । वार्ष्णेयं श्वेवं च पत्रं च कुतश्चमुदकं शिष्यः । उज्ज्वलम् acc. to मित्ता on वा. II. 119, रेवृत्तिच. II. p. 277, परा. मा. 111. p. 564, and व्यास, acc. to द्वायभागे VI. 2. 25 p. 127, नि. र., स्व. म. p. 130, वाज्णे वाज्णेकमेतदर्थम् । मित्ता. 'वार्ष्णेयं श्वेवं पत्रं च न तु वाज्णेकमेतदर्थं धर्मं तस्य विद्यापनश्चेन्नैव वार्तायत्त' द्वायभागे. Acc. to the Dāyabhāga, yājña means 'an idol or place of worship'. Three explanations are given in the स्व. म. p. 130 'वास्तुभेदपरिविभागवत्तादृशतद्भेदास्तुभेदचारश्चेन्नादियम् । प्रतिग्रहोपात्तयो-स्तयोः अविभागे विभागविशेषात् पूर्वाकर्तव्यम् । अथमुत्प्रेषोर्मुत्प्रेषेन विभागो न स्वयंभवे-द्वयेवंपरं वा । मित्ता जीवति वस्तिग्राह्यो वेन यदोद्यानादिभ्यो कृते तदवस्थानिभागे विभुर-पतिर्प्रेषनादुपपन्नम् । द्वायभागे p. 128.

1106. न प्रतिग्रहपूर्वेण अधिवादिगुताय वै । पश्यत्वेन पिता दद्यान्ते विभागो हरेत् न च. by मित्ता on वा. II. 119 (without name), ascribed to कृष्. by मेधा on मनु. IX. 153, स्व. नि. p. 431, स्व. म. p. 103.

may take it away". Another explanation is that the prohibition refers to a site or dwelling for religious purposes and to a field that is meant for grazing cows. The third explanation is that the prohibition implies that when the house or field is of small value it should not be partitioned by metes and bounds, but there should be partitioning of the price only. The *Dāyabhāga* gives yet another explanation (VL 2, 30 p. 128) that if during the father's lifetime any of the sons builds a house or lays out a garden on a family site, then it should not be divided at a partition but assigned to him only.

The basic verse on things impartible from their very nature is *Manu IX. 219*<sup>1107</sup> (= *Visnu Dh. S. 18. 44*) which says "clothes, vehicles, ornaments, cooked food, water (well etc.), women, *yogakṣema* and ways—these are declared to be impartible". All commentators explain that clothes ordinarily worn by the several members are impartible, provided they are more or less equal in value but not costly ones nor new ones. The same remark applies to vehicles and ornaments. *Pracāra* means either "ways leading to the house, garden and the like" (Mit., *Aparārka*, and V. P.) and also 'ways and pasture lands for cows and the like' (*Sm. C. II* p. 277, *Kullūka*). The Mit. (on Yaj. II. 118-119) states a special rule from Bṛ. that<sup>1108</sup> the clothes and ornaments worn by the father, the bed and the vehicle used by him should on his death be donated to the brāhmaṇa invited at the father's śrāddha. As to ornaments, the Mit. following *Manu IX. 200* says that those ornaments that are ordinarily worn by the respective members or their wives should not be divided, but those that are not so used everyday should be divided. A well is to be enjoyed by turns and not to

1107. वस्त्रं पद्मसङ्ख्येन कृतावसृज्यं विप्रः । योगक्षेमं वचनं च न विभाज्यं पञ्चकोटौ ॥  
मनु. IX. 219: *विष्णु* reads न विभाज्यं च दुस्तकम्. The express mention of books in *Visnu Dh. S.* is an indication of its posteriority to *Manu*. Several meanings are assigned to वस्त्र, योगक्षेम and वचन by different writers. All commentators of *Manu* except *Nandana* explain वस्त्र as vehicle (i. e. a horse, cart &c.), while *सम्भट्ट* reads पात्र (water vessel) and *अपरार्क* p. 725, वि. x. 504. मनु. पा. p. 683 explain वस्त्र as document evidencing a debt.

1108. पितृभूतवस्तूनि तु पितृकर्म विभजतां ब्राह्मणेभ्यः दातव्यानि । यथाह कुटुम्ब-  
रपतिः । यस्मादङ्गारसंपादि पितृश्रद्धाहोत्रिकम् । यस्मात्तर्पणः सन्मन्त्रैर्ब्राह्मणेभ्यः समर्पण-  
दिति । निता. ०३ पा. II. 119.



be partitioned by valuing it.<sup>1109</sup> If there be a single female slave (not a concubine) she was to be made to work for the divided members by turns, but if there be several slaves they could be assigned to each or their price could be divided. The expression "*yogakṣema*" has been variously explained from very ancient times. Langkfel (quoted by the Mit.) states "those who know the truth say that 'yoga' means 'sacrifices' and *kṣema* means *pūrta* (i. e. works of charity like wells). They both (i. e. the money set apart for these or the merit derived from these) are impartible, as are also the bed and the (wooden) seat (used by the father or other member)." From this verse the Mit. concludes that *yogakṣema* means sacrificial acts performed with *brauta* or *smārta* fire and charitable gifts such as constructing a tank or park etc. For *igta* and *pūrta* vide H. of Dh. vol. II. pp. 147, 843-844 and pp. 914-915 n. 2112 for the Mit. on *yogakṣema*. The words "yoga" and "kṣema" occur even in the Rgveda VII. 86. 8, X. 89. 10, X. 166. 5 and in Tai Br. III. 9. 19. 3 and Ait. Br. 37. 2. Even though joint family funds are spent for these still they are impartible. The Mit. further states that according to some *yogakṣema* means<sup>1110</sup> "royal ministers and purohita" who bring about the welfare of people, while others hold that the word means "umbrella, *choerie*, weapons, shoes, and the like". From Gaut. IX. 63 and XI. 16 it appears that *yogakṣema* came to mean even before Gautama's time "comfortable life" or "easy and happy way of maintenance" (particularly for a learned brāhmaṇa). The V. R. p. 504 tells<sup>1111</sup> us that,

1109. Vide *Shantaram v. Vaman* 47 Bom. 389 for the proposition that, both according to the Mit. and the *Vyavahāra-mayūkha*, a piece of land reserved as a common passage at the time of partition cannot be subsequently divided and *Nathubhai v. Bai Hanogeri* 36 Bom. 379 and *Govind v. Trimbal* 26 Bom. 273 for the propositions that rights of way and rights to wells and water belonging to a joint family are, if numerically unequal, indivisible, that there is a presumption that they continue joint and undivided even after partition, unless it is proved that at the partition a right of way or to water was exclusively allotted to a single member (at p. 277 and p. 282 the texts about water are quoted).

1110. योगक्षेमशब्देन योगक्षेमकारिणो राजमन्त्रिपुरोहितादय उच्यन्ते इति कश्चित् । उद्योगक्षेमशब्दोपानयनधृतश्च दृश्यते । मित्र. on vi. II. 119. Vide *Parthasarathy v. Tiruvengala* 30 Mad. 340, 343-44 for *yogakṣema* in the Mit.

1111. योगक्षेमं विवृक्त्रमेव राजकुलाद्विपरीतिमिति वकाशः । इत्युपपन्नं योगो योग-हेतुर्नैकादिः श्रेयः श्रेयहेतुस्तुल्यमिदं । वि. र. p. 504. The meaning given by Prakāśa appears to be the one intended in some medieval grants called *yogakṣema* grants, for an instance of which vide *Vaman v. the Collector of Thanav* Bom. H. C. R. (A. C. J.) p. 191 at p. 195.

according to Prakāśa, *yogakṣema* means "maintenance or annuity descending from the father (to the son) at a royal palace" and that Halāyūḍha explained *yoga* as meaning a ship or the like and *kṣema* as fort. The *Sm. Ç. II* p. 277 after quoting Laugākṣi gives an alternative explanation that *yogakṣema* means the wealth gained by a learned brāhmaṇa resorting to a rich man for his maintenance.<sup>1112</sup>

Kaut. ( III. 5 ) states<sup>1113</sup> the view of the ācāryas that those who are poor may divide even their water vessels and Kaut. adds that this dictum is fallacious or contradictory. Kāt. ( 882-884 ) brings together several things that are impartible<sup>1114</sup> "money that is entered in a document and is set apart for a religious purpose, water, women, a *ubandha* ( periodic gain ) that descends hereditarily, clothes worn ( on the body every day ), ornaments, whatever else that is not fit to be divided—these should be so employed by co-sharers that they may be enjoyed ( in common by all ) at the proper time. A pasture for cattle, ways, clothes worn on the body ( every day ), money lent and what is set apart for religious purposes—these should not be divided. This is the view of Bṛhaspati."

Bṛhaspati ( S. B. E. 33 p. 382 verses 79-84 ) has a good deal to say about things impartible. He finds fault with Manu IX. 219 for his somewhat wide proposition that clothes, ornaments

1112. अथवा योगक्षेमार्थमुपनिवेशरसकासाद् यो रिचधाना लाभः स एवात्र योगक्षेमशब्देनोच्यते । स्मृतिसू. II. p. 277. मौ. IX. 63 and विष्णुधर्मसूत्र 63. 1 prescribe योगक्षेमार्थमीश्वरनधिपद्येत् .

1113. उद्गपाद्याप्यपि निष्किलञ्जना विभजेरन्नित्याचार्यः । छलमेतद्विज्ञौ कौटिल्यः । अभ्युदास III. 5. For the meaning of छल, vide व्याख्येय I. 2. 51. कौटिल्य means that if a man has at least water pots he is not निष्किलञ्जन so far, as, if he is really निष्किलञ्जन, he can have no water pots even.

1114. धने पञ्चनिविष्टं तु धर्मार्थं च निष्कपितम् । उदके चैव द्वासाश्च निवर्त्यो यः क्रमागतः \* धनं वक्ष्यन्तुः कुर्यात् नानुसृतं तु पश्येत् । यथा कालोपयोग्यानि तथा वाञ्छयानि वस्तुभिः \* मोक्षकारश्च स्वया च पक्षे पञ्चाङ्गयोजितम् । यद्योऽयं न विभज्येत धर्मार्थं च वृक्षरहितः \* कालवा. 882-884 q. by उपरार्ह pp. 725-726. वि. र. pp. 504-505. स्मृतिसू. II. p. 277 refers to the first and last ; द्वायनाम VI. 2. 27 p. 127 has the verses योगचारश्च ङे and रेणोऽयं नानुसृतं and हिरण्यार्थं for धर्मार्थम् . द्वासाश्च is probably a mistrading of दासश्च. The first half may be split up in two 'bond debts and what is set apart for a religious purpose' ( द्वेद्वारापनाम पञ्चाङ्गि—says वि. र. p. 505 ) ; \* यद्योऽयं पञ्चकमुपनिवेशि हलायुधः, यद्योऽयं यद्योऽयं पुनःकादि तत्र विभज्येत मुखादिभिर्पितृ पारिजातः ' वि. र. p. 505.



and the like are impartible. He says<sup>1115</sup> "those who declared that clothes and the like are impartible have not given proper thought. In the case of the rich, their wealth may consist of (valuable) clothes and ornaments. If these (clothes and ornaments) be kept joint (i. e. undivided) they cannot yield subsistence nor can they be assigned to one alone (out of many co-sharers). They should therefore be distributed with skill, otherwise they will become useless. Clothes and ornaments may be divided by selling them (i. e. by dividing the proceeds of sale), debt consigned to writing is divided after recovering it (i. e. the bond itself is not divided), cooked food (may be divided) by exchanging it for uncooked food. The waters of wells that have flights of steps and of other wells is to be enjoyed by drawing it out according to the needs (of the co-sharers); in the same way a field or a water course is to be enjoyed according to respective shares; a single female slave is to be made to work in the houses of the co-sharers according to their shares; if there be several female slaves, they are to be allotted in equal shares (to the sharers); this very rule applies to male slaves also; the income derived from a *yogakṣema* grant is to be equally divided and pasture lands (or ways) are to be used by the co-sharers according to their respective shares."

The next points to be dealt with are: what persons are entitled to partition and what is the mode of partition. But before doing so some preliminary remarks must be made on the expressions coparcenary and 'joint family', which occur at every step in modern works on Hindu Law. In the *smṛitis* and commentaries we come across the words *kufumba* (Nār., *dattāpradānika* 6 or Yāj. II. 175), or *acchakta-kufumba* (Yāj. II. 45). A joint Hindu family consists of all males lineally descended from a common male ancestor and includes their wives and unmarried daughters. A daughter on marriage ceases to be a member of her father's

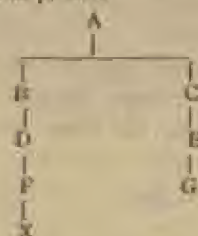
1115. कलादयोऽविभाग्या यैर्दत्तं तेन विचारितम् । यने भन्तु मनुजानां कलादङ्गार-  
संभिवद् ॥ मन्वादिपुत्रमनन्तरीयं दत्तं नैकत्रयं शक्यते । कुशया विभजनीयं तदुत्पत्तयानर्थकं  
भवेत् ॥ विक्रीय कलामरणपुण्यसुखाद्य लेभितम् । कुशाक्षं चाकुशाक्षेन परितर्प्य विभज्यते ।  
उत्पुष्टं कुपाप्यन्मरणपुण्यमरणं युज्यते । तथा भाग्यदुर्मार्गं मृत्युमेव विभज्यते ॥ एका कौ  
कारवेकमेव यथाक्षेन ह्येते सुते । बहुभ्यः सन्तंशतो देया वासानामप्ययं विधिः ॥ योगक्षेमवते  
ह्यसः सममेव विभज्यते । यच्चारभ्य यथाक्षेन कर्तव्यं विविधमिः सदा ॥ बृह. q. by अदरार्क  
p. 720, स्मृतिच. II. 377, नि. १, pp 505-506. Br. generally holds Manu in the  
highest veneration as he says देहाद्यैर्विभज्यन्तुत्यादौ तापार्थं तु मनुस्मृती । सन्तर्प-  
यिषीया वा स्मृतिः भगव उवाचमेव ॥ (q. by अदरार्क p. 625 and कुशकृष्ण on मनु I. 1.);  
but here he criticizes Manu IX. 219.

family and becomes a member of her husband's family. Under the Mitākṣarā a Hindu coparcenary strictly so called is a much narrower group than the joint family. It comprises only those males who take by birth an interest in the joint or coparcenary property i. e. a person himself and his sons, son's sons and son's grandsons for the time being a coparcenary. The diagram and the note below<sup>1116</sup> will explain the limits of a coparcenary.

A coparcenary is purely a creation of law; it cannot be created by act of parties, except by adoption. In order to be able to claim a partition, it does not matter how remote from the common ancestor a person may be, provided he is not more than four degrees removed from the last male owner who has himself taken an interest by birth.<sup>1117</sup>

Some characteristic features of the Mitākṣarā coparcenary may be briefly stated. There is in the first place *unity of ownership* i. e. the whole body of coparceners is the owner and no individual member can say, while the family is undivided, that he has a definite share, as his interest is always fluctuating, being liable to be enlarged by deaths and diminished by births in the family. There is also *unity of possession and enjoyment* i. e. all are entitled to possession and enjoyment of the family

1116. Vide *Commissioner of Income Tax v. Luxminarayun* 59. Bom. 518 at p. 521.



Here all are to be assumed to be males. A and his sons B and C may form a coparcenary. So also, if B and C have each a son, then A, B, C, D, E, will form a coparcenary. If D and E have respectively F and G as sons, all persons from A to G will form a coparcenary. But here the limit is reached. If X is born during the lifetime of A, he being the son of the great-grandson of A takes no interest by birth and is outside the coparcenary during A's lifetime. But if X is born after the death of A, then he forms a coparcenary with B, D, F. Suppose that B dies before A. That will not however introduce X into the coparcenary of which A is the head, as X being the son of A's great-grandson F takes no interest by birth in ancestral property held by A. Suppose that B C D E F and G all die in the lifetime of A, then A becomes the sole surviving coparcener and X is not a coparcener along with A, because he is 5th in descent (counting both A and X) from A. Suppose A the only surviving coparcener dies. Then X will take A's property as an heir and not by survivorship as a coparcener.

1117. Vide *Moro v. Ganesh* 10 Bom. H. C. R. p. 444, pp. 461-463 where Mr. Justice Nanabhai Haridas very lucidly explains by several diagrams the limits of a coparcenary and what persons are entitled to demand a partition and from whom.



property and the possession of one is ordinarily possession on behalf of all. Further, while the family is joint and some coparceners have many children and others have few or none or some are absent, they cannot complain at the time of partition about some coparceners having exhausted the whole income and cannot ask for an account of past income and expenditure. Kat. (885) expressly states so.<sup>1118</sup> Moreover, the joint family property devolves by survivorship i. e. on the death of a coparcener his interest lapses and goes to the other coparceners, subject to this that if the deceased has left a son, grandson, or great-grandson, the latter represents and occupies the place of the deceased coparcener when a partition takes place. A female cannot be a coparcener (even if she be the wife or the mother). Another characteristic is that each coparcener has a right to enforce a partition. The affairs of the family are managed by the father and if he be very old or dead, by the senior brother or member or by any other member with the consent of the senior member (Nār., dāyabhāga 5 and Śāṅkha quoted above in note 1067). The manager is called *hartū* in modern times though the smṛtis and digests employ words like *kufumbin* (Yaj. II. 45), *grhin*, *grhapati*, *prabhu* (Kat. 543) and not *hartū*. He has special powers of disposition (by mortgage, sale or gift) of family property in a season of distress (for debts), for the purposes and benefit of the family (maintenance, education and marriages of members and other dependents) and particularly for religious purposes (śrāddhas and the like).<sup>1119</sup> The father has the same powers as manager and certain other special powers, which no other coparcener has. The father can separate his sons from himself and also among themselves if he so desires, even if they do not desire to separate<sup>1120</sup> (Yaj. II. 114); while an ordinary

1118. बन्धुनापहृतं द्वायं बलात् न द्वायेत । बन्धुनामधिकारो भोगं नैव भद्रायेत् ॥ कात्या. q. by द्वायभाष XIII. 7 p. 322, वि. र. p. 326. The द्वायभाष explains 'सामादिना द्वायेत न बलात् अविभक्तं तु बद्धिर्न युक्तं तदसौ न द्वायेत' and वि. र. 'नदिभाषकाले नामाधिकारोपभोक्तो च भोगं द्वायेतत्युक्तं' The द्वायवत्स p. 183 says 'अत्रापहृतपदं भाक्तम्'.

1119. एकोपि स्वयमेव कुर्याद्दानाधमनस्विकरणम् । आधमकाले कुतुम्भार्थं धर्माय च निश्चयः ॥ इति । अन्वयः । अत्रात्मन्यवस्थां पुत्रेषु वीर्येषु वाञ्छन्नादानादात्मन्येषु आदुष्य वा तदभिधायिभवेत्यपि सकलकुतुम्भस्वापिगमादपि उपायवशे वाच्यकर्मण्येषु च पितृ-भ्रातृवेषु स्वावसरं दानाधमनस्विकरणेकोपि समर्थः कुर्यात् । इति । मिता. on यज. II. 114. The verse एकोपि is ascribed to व्यास by न्यय. वि. p. 411.

1120. This power of the father has been recognized even in modern times. Vide *Kandasami v. Doraisami* 2 Mad. 317, 321-322, *Nirman v. Fatch* 52 All. 178. But it has been held that the grandfather has no power to separate his grandsons *inter se*. Vide *A. I. R. (1943) Mad. 327*.

coparcener can only separate himself from the family. The father can make within reasonable limits gifts of ancestral movable property without<sup>1121</sup> the consent of his sons for performing indispensable acts of duty and for purposes laid down by the texts, such as gifts through affection (to wife, daughter, son or the like), the support of the family and relief from distress. The father can make a gift of even immovable property within<sup>1122</sup> reasonable limits for pious purposes only (such as to a family idol or to an idol in a temple at the time of obsequies). The father can sell or mortgage the joint family property to pay off an antecedent debt contracted by him for his own personal benefit, provided it is not illegal or immoral (vide p. 448 above). No coparcener (except the father or manager as stated above) can dispose of his undivided interest by gift, sale or mortgage according to the strict theory of the Mitākṣarā except with the consent of the other coparceners. This right to object to alienations made without consent or made without legal necessity is another characteristic of the joint Hindu family under the Mitākṣarā. Hg. (S. B. E. 33 p. 384 verse 93) says<sup>1123</sup> "whether kinsmen are joint or separate they are alike as regards immovable property, since a single one from among them has no power in any case to make a gift, sale or mortgage of it." But in modern times the courts in Bombay, Madras and the Central Provinces have loosened this strict rule by holding that

1121. मयिमुक्तामालानां सर्वस्यैव पिता यतुः । स्वाधरस्य तु सर्वस्य न पिता न पितृ-महः ॥ यितुमादाश्च भुञ्जते पञ्चाणामरण्यानि च । स्वाधरे तु न भुञ्जते नसादे सति पैतृके ॥ both quoted by the पितृ, on वा. II, 114, परा. मा. III, 481, (the first) by दावभाग II, 22 p. 33 (attributing it to वा. ) and the first is ascribed to स्वाध by वय. नि. p. 411 and to यितु by सितादुताण्ड्य folio 100. Vide note 1033 above.

1122. Vide *Ramalinga v. Sivachidambara* 42 Mad. 440, *Gangai Reddi v. Tammi Reddi* 34 I. A. 136, 140, *Sri Thakurji v. Nanda* 43 All. 360 for the validity of gifts of small immovable property by the father for religious purposes. But in *Jinnappa v. Chimmusa* 59 Bom. 459 a gift of a small portion of joint family immovable property by the father to his daughter on the ground that she looked after him in his old age was set aside at the suit of his grandsons.

1123. वतु बृहस्पतिश्चन-अभिभक्ता विभक्ता वा अपिपत्ताः स्वाधरे नमाः । वक्तो ह्यनीशः सर्वस्य दानाधमनस्कि द-इति तदपि कविनकेतु द्वयस्य मधुरप्रसादकरपानीश्वरतामसवीर्यतु-ज्जायते कार्या । विभक्तैरुपकाले विभक्ताविभक्तमक्षयसुदामेन उपकारास्तीकार्य सर्वपितृकुला न पुनरेकस्यानीश्वरत्वेनामे विभक्ताहुमतिपरिरेकेणापि व्यवहारः सिधयतिेति व्याख्येयम् । पितृ, on वा. II, 114. The स्मृतिच. II, p. 309, the वय. म. p. 136 and some others read दामादाः for अपिपत्ताः; दावभाग II, 22 p. 34 reads विभक्ता अभि-भक्ता वा अपिपत्ताः and attributes it to स्वाध; अदरार्क p. 757 attributes विभक्ता ताविभक्ता वा to कार्या.



a coparcener may sell, mortgage or alienate for *value* his undivided interest in coparcenary property without the consent of the other coparceners<sup>1124</sup> and the courts have allowed the undivided interest of a coparcener in joint family property to be attached at the instance of a creditor for the individual debts of a coparcener. This is one of the most serious departures from ancient and medieval Hindu Law made by the Courts on the ground of equity. One more right of all members of the joint Hindu family is the right to be maintained from the property and income of the joint family. Such matters as the remedies of the purchaser or mortgagee from an individual coparcener are here left out of consideration as appropriate only in a treatise on modern Hindu Law.

The conception of a coparcenary under the *Dāyabhāga* system is entirely different from that of the *Mitākṣarā*. Under the *Dāyabhāga*, sons do not acquire any interest by birth in ancestral property, but the son's rights arise for the first time on the father's death and the sons take as heirs and not by survivorship. There is hence no coparcenary in the sense of the *Mitākṣarā* between a father and his sons. The father has absolute power to dispose of all kinds of ancestral property by sale, mortgage, gift, will or otherwise in the same way as he can dispose of his separate property. The son has no right to demand a partition during his father's lifetime. A coparcenary starts on the death of the father between the latter's sons or grandsons i. e. between brothers, uncles and nephews, or between cousins. If a coparcener dies without male issue, there is no right of survivorship in the other coparceners but the deceased member's widow or daughter may succeed to his share and thus even females may become members of a coparcenary under the *Dāyabhāga*. Each coparcener takes a defined share under the *Dāyabhāga* (not an indefinite one as under the *Mitākṣarā*). Any coparcener under the *Dāyabhāga* can sell, mortgage, or dispose off by gift or will his share (*Dāyabhāga* II. 28-31).<sup>1125</sup>

1124. Numerous cases lay down this proposition; vide, for example, *Vasudeva v. Venkatesh* 10 Bom. H. C. R. p. 139 which was approved of by the Full Bench in *Fakirappa v. Channappa* 10 Bom. H. C. R. p. 163. *Villa Butien v. Yamenamma* 8 Mad. H. C. R. 5.

1125. On निभक्ता ... एको ह्यमीश; etc. the दायभाग (II, 28-30 p. 34-35) remarks 'स्वाम्यवचनं तु स्वामित्वेन दुर्धृतदुरुपयोगविरहितवृत्तानादिना कुदुस्वविरोधावृत्तानामित्याज्ञापनार्थं निषेधकं न तु विक्रयप्रतिषेधार्थम् । एवं च स्वाम्यं द्विपदं ... विक्रयः— दायवेमादित्थं प्रवृत्त्येवमेव वर्जनीयम् । ... तेन दायविक्रयकर्तृव्यतिरिक्तं तुल्यकरमाह विप्रविक्रमो भवति न तु दानाद्यनियतिः । वचनशतेनापि वस्तुनोऽन्यथाकरणशक्तैः ।

Every coparcener is entitled to a share on partition. It has been already stated (on pp. 570-571) how in Bombay a son is not entitled to a partition if the father is *joint* with his own father, brothers or other coparceners and does not assent to the son's claim. There is a volume of case-law about a suit for partition brought on behalf of a minor, but it has to be passed over here, as there is hardly anything corresponding to this in the works on dharma-sāstra. The texts provide for the case of a son who was in the mother's womb at the time of partition but was born after it. If A and his sons B and C, who are members of a joint family, come to a partition and take one third each of the family property and six months later A's wife gives birth to a son D, then the partition has to be reopened and D will get  $\frac{1}{4}$  ( $\frac{1}{3}$  if the mother is given a share) of the family property that will remain after meeting all proper charges since the first partition and taking into account all income and accretions during the interval. The same rule applies to a partition among brothers, when the widow of a predeceased brother gives birth to a posthumous son conceived before the partition but born after it. Vide Yaj. <sup>1126</sup> II. 122 and Visṇu Dh. S. 17. 3. Vasistha (17, 40-41) therefore recommends that when it is known that the wives of some brothers (predeceased) are pregnant the other brothers should postpone partition till the delivery of those women. Where a son is born as well as conceived after partition between a father and his sons the rights of the afterborn son are declared by Gaut. <sup>1127</sup> 28. 27, Manu IX. 216, Yaj. II. 122, <sup>1128</sup> Nar. (dayabhaga 44), Br. (S. B. E. 33 p. 372 verses 17 and 19) that he takes the share allotted to the father and also all the self-

1126. पितृविभक्ता विभावात्मनोपक्रम्य भग्नं द्यूतः । विष्णुधर्मसूत्र 17. 3; दृष्टपादो नहिभागः स्वादावप्यविभोभितात् । या. II. 122, on which the *mita* remarks 'एतच्च विभावात्मनोपक्रम्य ज्ञातुर्भावात्मनोपक्रम्यभावां विभावात्पूर्वमुत्पन्नकस्यापि वेदितव्यम् । स्वह-वर्माचो तु यत्नं प्रतिव्य विभागः कर्तव्यः । यथाह वसिष्ठः । अथ ज्ञातुर्भावावविभागः । पाश्चा-नयायाः श्रियस्तासामा पुत्रतामाह । इति ।'

1127. विभक्तजः विष्णवे । मी. 28. 27; द्यूतैः सह विभक्तेन पित्रा दातव्यमस्मिन् । विभक्तजस्य तत्सर्वमस्मीशाः पूर्वजाः स्मृताः ॥ दृष्टपति q. by *mita*, on या. II. 122, दृष्टम् on मी. 28. 27, स्मृतिच. II. p. 307, दावमान VII. 6 p. 131, च. स. p. 104.

1128. There is great divergence among commentators about Yaj. II. 122 विभक्त्यु ज्ञेयो जातः सर्वजां विभावमाह । दृष्टपादो नहिभागः स्वादावप्यविभोभितात् ॥



acquisitions of the father made after the partition.<sup>1129</sup> The Mit. understands that the first half ( of Yāj. II. 122 ) refers to a partition during the father's lifetime and provides that if a son was conceived and born to the father after partition he took the share allotted to the father and all the self-acquisitions of the father made after partition (*tathā vibhāgottarakūṭam pitrā gatā kīṣkī arjitaṃ tat sarvaṃ vibhāgajasyaiva*) and the Mit. relies on Manu IX. 216 and Br. for this. The Mit. takes the 2nd half of Yāj. II. 122 as referring to a partition made after the father's death and states that, if a son was in the mother's womb when the brothers separated after the father's death and was born subsequently, the posthumous son would be entitled to reopen the partition and would get a share out of the property ( not as it stood at the date of partition ) that would be there after allowing for proper expenditure ( e. g. payment of debts etc. ) and accretions. The Mit. extends the same rule to a posthumous son born after partition to the widow of a brother who died before the partition and

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1129. In *Natal Singh v. Bhagwan Singh* 4 All. 427, where after the father separated from his three sons he married a second wife, had a son from her and died leaving certain property inherited by him from a third person, it was held, relying on Manu, the Mit., Br. and the Viramirodha, that the son born after partition was entitled to the whole of the property acquired by the father to the exclusion of the three sons that had separated from him. In *Chengam v. Maniam* 20 Mad. 75 (where a father partitioned his ancestral property half and half between his two sons, reserved no share for himself and subsequently another son was born to him) it was held that the subsequently born son was entitled to one-third by partition not only in the property as it stood at the date of partition, but also in the property acquired by the two sons by means of the produce of that property (relying on the words of Yāj. II. 122 "āśvayajauśodhitā"). The dates of the partition and of the birth of the son are not clear from the report. In *Ganpat v. Gopatrao* 23 Bom. 636 (where in 1875 a father separated his son born of his first wife by giving him one third of the estate and gave two thirds to his two minor sons from the second wife and lived with them and another son was born to him in 1880, who sued in 1894 claiming one-fourth of all property) it was held that the one third given to the son by the first wife could not be affected and the plaintiff was only entitled to claim a share in the property given to the other two sons, and further that the texts of Viṇṇa and Yājñavalkya are somewhat vague and are applicable only to the case of posthumous sons who have no provision made for them. Vide also *Shivaji Rao v. Vasantrao* 55 Bom. 267 for further limitations on this rule in favour of the after-born son.

when the fact of the pregnancy was not known to the separating brothers. Viśvarūpa regards the whole verse as laying down one proposition, the first half declaring that if a son (who had been already conceived) were born to the father after partition with the sons, he would be entitled to the share taken by the father, while the 2nd half declares that if the father took no share then the son so born would be entitled to reopen the partition and take a share of the property remaining after taking into account accretions and expenses. The Dipakalikā seems to be of the same opinion as Viśvarūpa, but it adds that Manu IX. 216 provides for the case where the son is both conceived and born after partition. The Sm. C. (II pp. 306-307) holds that when in the father's lifetime partition takes place the sons separating should give a share to the after-born son, but the father should retain his, while the whole of Yāj. II. 122 applies to the case where partition is made after the father's death and a posthumous son is born to the mother or to the widow of a brother dying before partition. In such a case the partition should be reopened and a share given out of the property as it stood at the first partition or out of the property as found to exist at the reopened partition after allowing for accretions and proper expenses (for payment of debts, for *sanskāras* of brothers and sisters); vide V. P. p. 463 for explanation of 'dr̥śyād' etc. The Vyavahāra-mayūkha (p. 105) follows the Sm. C. and V. R. (p. 539) in explaining the whole of Yāj. II. 122 as referring to the case of a posthumous son conceived before partition made on the father's death but born after partition from the mother or step-mother of the separating brothers or from the wife of a brother dying before partition.

An adopted son, if adopted by a coparcener in a joint family or by a sole surviving coparcener, becomes under the Mītakṣarā law a member of the coparcenary from the moment of his adoption and has the same rights to demand a partition as an *aurasa* son has. Under the Dāyabhāga even an *aurasa* son cannot claim partition during his father's life and so an adopted son would be in no better position. If after a person adopts he has an *aurasa* son, the adopted son's share becomes reduced according to most commentators, but this subject will be dealt with later on under adoption.

The *smṛitis* and some of the medieval and later digests even enter into elaborate discussions about the rights of a son or sons born from wives of classes lower than that of the father. Vide



Gaut. 28. 33-37, Baud. Dh. S. II. 2. 10, Kauṭ. III. 6, Vas. 17. 48-50, Manu IX. 149-155, Yāj. II. 125, Viṣṇu Dh. S. 18. 1-33, Nār. (dayabhāga 14), Br. (S. B. E. 33 p. 374 verses 27-29), Śaṅkha (quoted in V. R. p. 531). It is not necessary to deal in detail with the varying provisions made in these works, as marriages with women of a lower class have not been in vogue for several centuries; but a few remarks will have to be made. Manu IX. 153 and Yāj. II. 125, Br. (S. B. E. 33 p. 374 v. 27) clearly state that if a brāhmaṇa has sons from wives of the four classes, the whole property should be divided into ten parts which should be distributed as follows:—four for the son of the wife of the brāhmaṇa caste, three for the son of the ksatriya caste wife, two for the son of the vaiśya caste wife and one for the son of the śūdra class wife. Manu IX. 154 (almost the same as Anuśāsana 47. 21) further provides that whether a brāhmaṇa leaves sons or no sons born (of wives of the three twice-born classes) the heir shall give, according to the law, to the son of a śūdra class wife no more than a tenth part of his estate. V. P. p. 487 and the Mit. (on Yāj. II. 133) after quoting Manu, make this quite clear. But as remarked by the Mit. on Yāj. II. 125 the son of a brāhmaṇa from a wife of the ksatriya or other lower class was not to share in land obtained by the brāhmaṇa by way of gift (vide Br. quoted in note 1106 above) though he could share land acquired by purchase or the like. A verse (attributed to Br. by Day. IX. 22 and V. R. p. 534 and to Devala by V. P. p. 466) denies altogether a share in land to a śūdra class wife's son of a brāhmaṇa, while Manu IX. 155 (the son of a person of the three higher classes from a śūdra woman gets no share in the paternal wealth) is variously explained, the Mit. saying that it applies only where the son has already got some property from his father while the Mayūkha and some others say that it applies to the son of a śūdra woman who is not married to the person of higher caste but is only a mistress. Kauṭ. III. 6 and Br. (quoted by V. R. p. 534) provide that the *pārakum* son gets  $\frac{1}{4}$  of his father's estate and the nearest sapinda gets the remaining two thirds. Śaṅkha-Likhita (quoted by Medhātithi on Manu IX. 155) have the same rule as in Manu IX. 155. It is remarkable that early medieval writers like Vijñānesvara (about 1100 A. D.) or even later ones like Mitramiśra (first half of 17th century) in V. P. pp 464-466 enter with zest into elaborate explanations of Manu IX. 153 and Yāj. II. 125 and never expressly state that these verses had ceased to be applicable in their days, though there

are a few other medieval works like the Sm. C. II. pp. 288-289 and the Madanaratna<sup>1130</sup> that either do not explain these verses at all or say that these verses are applicable to a different age. According to Manu (IX. 178, 180) the son of a brāhmana from a śūdra class wife is called śandra or pāraśava, while according to Yāj. I. 91 he is called both niśāda and pāraśava (vide H. of Dh. vol. II. pp. 86-87 for niśāda and pāraśava). But he is one of the secondary sons (*jaṇm-putra*) according to Manu (IX. 180), Vas. 17. 38 and others. Writers from Aparārka downwards quote certain<sup>1131</sup> verses from Śaunaka on matters forbidden in the Kali age (*kali-varjya*) one of which is the acceptance of sons other than aśura and dattaka.<sup>1132</sup>

1130. असर्वेषु द्वेषु दुष्यन्मनुर्गुणत्वादिकुतो यो विदोक्तः स कर्मानामसम्भवात्  
विवाहश्च द्विजग्नाभिः इति आदिपुराणे कल्पिष्यमाणे असम्भवापरिणामस्य निषेधात् सोमने  
सूयगणिकादीनां प्रश्नाराभावेन मेह स्थितिः । समपनिर्णयोद्घोते कल्पिष्यमाणेऽस्या-  
भिपदाहतेन दुर्नारसंशयोऽत एव पुत्रत्वेन परिग्रहः इति पञ्चमेन कलौ त्रये दुर्नारसपुत्रिकापुत्र-  
पतिरिकाणां श्रेयसादीनां गौणपुत्राणां निषेधात् संप्रति तेषां प्रश्नाराभावेन तद्विभागविषय-  
विशेषो नात्र निरूप्यते । मदनरत्न (folio 23a) ; अत्र द्वास्माभिरसर्वपुत्राणां दुष्क-  
तरेषां गौणपुत्राणां दुष्कतापास्तव्युत्तरश्च मागधिषो न निषयन्ते । संप्रत्यननुवीयमानत्वाद्  
इथा च ग्रन्थविस्तारापत्तेः । स्मृतिच. II. p. 289.

1131. अत्र एव कलौ निषर्तन्ते इत्यनुवृत्तौ दौर्नारकेनोक्तं दुर्नारसंतरेषां तु पुत्रत्वेन परिग्रह  
इति । अपरार्क p. 739. Vide also परा. मा. I. 2. p. 97. व्यवहारमयुक्त p. 107 (अत्र  
दुष्कतमिहा गौणाः दुष्काः कलौ वर्गाः । दुर्नारसंतरेषां तु पुत्रत्वेन परिग्रह इति तन्निषेधेन  
पाठ्यते).

1132. In *Natha v. Chotalal* 55 Bom. I the son of a brāhmana from a śūdra wife was held entitled to a tenth share in the estate of his father and uncle and that the remaining nine-tenths would go to the nearest agnate, and Manu and Yāj. are relied upon. But this would be opposed to the view of the Mayūkhā that secondary sons are not allowed now and is also against the spirit of the warning given by the Privy Council to Judges of modern times over 75 years ago in *Collector of Madras v. Moosoo Ramlinga* 12 Moo. I. A. 397 at p. 436 "the duty of an European Judge who is under an obligation to administer Hindu Law is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal and has there been sanctioned by usage. For under the Hindu system of law, clear proof of usage will outweigh the written text of the law." This passage (omitting the word "European") is quoted by the P. C. in *Atmaram v. Bajirao* 62 I. A. 139 where it is further held that in a conflict between script texts and commentators the opinion of the latter prevails in the provinces where their authority is recognized. *Natha v. Chotalal* 55 Bom. I purports to follow *Bai Untub v. Jivantal* 46 Bom. 371. In both cases the parties came from

(Continued on the next page)



An illegitimate son has in certain circumstances rights of partition in the property of his putative father. An illegitimate son may be a son by a concubine who is a *dāsī* (i. e. who is in exclusive and continuous keeping) or he may be the son of a woman who is not a *dāsī*. The first is called *dāśīputra*<sup>1133</sup> and the second is hardly ever dealt with in dharmasāstra works.<sup>1134</sup>

(Continued from the last page)

Gujarat where the Vyavahāramayūkha is of paramount authority. In both cases not a word is said about the proof of the usage of marriages between a brāhmana and a śūdra woman taking place in Gujarat but reliance is placed solely on the recognition of *anuloma* marriages by Manu and Yājñavalkya, the strong condemnation of *pratiloma* marriages by both and the inference drawn from the comment of Viśākhavāra and the remarks of Nīlakaṇṭha that *anuloma* marriages are not prohibited. With the most profound respect for the learned Judges who decided those two cases, it has to be said that they took up the position of legislators and did not merely interpret the Hindu Law in accordance with usage and ignored the text of the Mayūkha itself stating that all secondary sons (among which the son of a brāhmana from a śūdra caste wife is included by Manu) except *aurasa son* (who is defined by Yāj. II. 128 himself and the Mit. as the son of a wife of the same class) and *dattaka* are forbidden in the present age. The decision in *Bai Gulab v. Jivanlal* was opposed to the considered view expressed by Chandavarkar J. in *Bai Kashi v. Jannadas*, 14 Bom. L. R. 547 at p. 552. From this gloss of the Mitākṣarā from which Nīlakaṇṭha expressed nowhere any dissent it is reasonable to infer that, according to the leading authorities on Hindu Law as recognised in this Presidency, a śūdra wife is not permitted to a brāhmin, a kshatriya or a vaiśya "and to the decisions of some other High Courts in India (vide 28 All. 455 for example), it should not be supposed that the present writer is entirely against such marriages. What he is concerned to emphasise is that the Legislature should deal with these matters, that Judges should not assume the role of legislators and give rise to conflict of laws which are inevitable if the same kind of marriage is held valid by the Bombay High Court and invalid by the Allahabad or Madras High Court.

1133. *Dāśīputra* occurs in the story of Kāvya Alīśa in the *Altareya* and *Sāṅkhya* Brāhmanas. 'सपत्न्याः सरस्वत्यां सवगास्त तद्वागि कपयो मये निषमाद तं मेमे उयोदुर्द्वेषा वै त्वं दुर्वोसि न वचे त्वया सह भवद्विषयाम इति ।' अ. भा. XII. 3. 'कपयो वै सरस्वत्यां सवगास्त तं कपयितुषे सोमादुनयन्द्वासाः पुनः कितपोऽ-वाङ्मनः कपे नो मयेऽद्विषेति ।' इ. भा. 8. 1. Vide note 923 for *śūdrāputra* in the *Tāndya Br.* 14. 6. 6.

1134. Yāj. II. 290 appears to distinguish between a *dāsī* in general and one who is *avaruddhā* (in the exclusive and continuous keeping of a man) "अवर्द्धास दासीषु सुविशतस्तु तथैव च । सम्पत्तयि दुर्मादादयः पञ्चात्मनिकं इमम् ।" For the com. of the Mit. vide n. 1593 below.

From ancient times it had been settled that the *dāśputra* of a person belonging to the twice-born classes is not entitled to a share on partition or to inherit, but is entitled to maintenance only. Gaut. 28. 37 provides<sup>1135</sup> that even the son of a *brāhmaṇa* who is issueless from a *śūdra* woman (a concubine) should receive the means of maintenance provided he is obedient in the manner of a pupil. Bp. (S. B. E. vol. 33 p. 374 verse 31) contains a similar rule for the maintenance of an illegitimate son born of a *śūdra* woman after the father's death. But as regards the son of a *śūdra* from a *dāśī* Manu IX. 179 provides that such an illegitimate son may take a share in the father's property if the father allows him to do so. The classical passage on the rights of the illegitimate son of a *śūdra* from a *dāśī* is Yaj. II. 133-134 which verses are introduced by the V. *Mayūkha*<sup>1136</sup> with the words "Yaj. declares a special rule as regards one begotten by a *śūdra* on a woman (of the same caste) not married to him" and which may be rendered thus "even a son begotten by a *śūdra* on a *dāśī* may partake of a share at the choice (of his father). But, when the father is dead, the brothers should make him the recipient of a half share". This passage and the comments of the Mit., the V. *Mayūkha*, the *Dayabhāga* have been cited and explained in numerous cases. The following propositions as deduced from the texts and the case-law may be set out here:—(1) the illegitimate son of a *śūdra* even under the Mit. does not acquire by birth any interest in the estate held by the father and so cannot enforce a partition in his father's lifetime, but the father may give him a share in his lifetime, which may even be equal to that of a legitimate son (4 Bom. 37, 44-45, 23 Mad. 16); (2) on the father's death an illegitimate son of a deceased *śūdra*

1135. शुद्रादुग्रोऽप्यनपत्यस्य शुभ्रदुर्धेतुभेद इति दूतमन्त्रेवातिविधिना । यौ. 28. 37; अनपत्यस्य शुभ्रदुर्धेतुमात्रं शुद्रयोनिजः । लभेत जीवने श्रेयं सपितृणाः समवाप्तुम् ॥ बृह. q. by दायभाग IX. 28 p. 141, चत. नि. p. 430.

1136. शूद्रेणापरिणीतायामुपपन्ने विशेषमात्रं दातव्यमवश्यः । जातोऽपि दारयां शूद्रेण कान्तोऽप्यसौ भवेत् । सते पितरि कुप्यते आतरकथंभाषिकम् । अत्रातुको श्रेयसर्वं दुहितृणां सुतादृते ॥ च. मण्ड. pp. 103-104; अत्र च शूद्रग्रहणात् द्विजातिना दारयासुपपन्ना पितृ-रिच्छापापघातं न समते मात्तपयं दूत एव कुर्यात् । किमत्रदूतत्वध्वेजीविनमात्रं समते । निता, विश्वरूप quotes a prose text of Bṛhaspati to the same effect 'वध्यां बृहस्पतिः कान्तश्च शुद्रापरिधनस्य आतुरां समानमात्रं वेत्ते पितरि दूयुः शुभ्रदुर्धेतु । इति. In *Rahi v. Govind* 1 Bom. 97 at p. 113 and in other cases the word 'aparīṭhāyām' in the V. *Mayūkha* has been wrongly translated as meaning 'an unmarried woman', when it really means 'a woman not married (to the *śūdra*)'.



becomes a coparcener along with the legitimate sons and the former is entitled to seek partition (4 Bom. 37 F. B.); (3) on a partition the illegitimate son takes only one half of what he would have taken<sup>1137</sup> if he were a legitimate son i. e. if there be one legitimate and one illegitimate son, the latter would take one-fourth and the former three-fourths; (4) if no partition takes place and the legitimate son or sons all die without partition, the illegitimate son would take the whole as the last survivor of the coparcenary (L. R. 17, L. A. 128); (5) if there be no legitimate sons, grandsons, or great-grandsons of the śūdra father, the illegitimate son takes the whole estate;<sup>1138</sup> (6) as the text of Yāj. refers only to a son, an illegitimate daughter is not entitled to any inheritance or even to maintenance (32 Bom. 562); (7) if the śūdra father be joint with his collaterals such as brothers, uncles or nephews, the illegitimate

1137. The decisions establish that *dāsī* is not to be taken in the strict literal sense (a female slave), but means a woman kept as a concubine, the connection being continuous, exclusive and lawful. In order that the illegitimate son of a śūdra may take a share or inherit, it must be shown that the connection between the śūdra man and the woman was not incestuous or adulterous or though adulterous at the beginning had ceased to be so when the illegitimate son was born. Vide *Rahi v. Govind* 1 Bom. 97 at p. 110, *Sada v. Balas* + Bom. 37 (F. B.) at p. 44, *Vithabal v. Ponda* 38 Bom. L. R. 593, *Scanderarajan v. Arumachalam* 39 Mad. 136 (F. B.) pp. 152-159, *Tukaram v. Dinkar* 33 Bom. L. R. 289. But even the son of an adulterous intercourse has been held entitled to maintenance (1 Mad. 306, 34 Mad. 68, 47 Bom. L. R. 5 F. B.). The earlier cases in Calcutta (as in 1 Cal. 1, 19 Cal. 91, 28 Cal. 194), held that *dāsī* meant only a female slave and as slavery was abolished in India, there could be no *dāsīputra* strictly so called. But in *Rajaminath v. Nisai* 48 Cal. 643 (F. B.) the former Calcutta decisions were overruled and the Bombay High Court's interpretation of *dāsīputra* has been accepted. The passage of the *Dāyabhāga* (IX. 29 p. 143) which was to be correctly interpreted in the Calcutta cases runs "बृहस्पतिर्ब्रूयादपि ब्रह्मदत्तः पितृभूमन्वा ब्रह्मन्मनुष्यमपि सः । तदाह सः । दास्यं वा- (सू. IX. 179) । अनुमतिमन्त्रेण तर्षीशरः । तदाह ब्राह्मणस्यः । ज्ञातोपि- (वा. II. 133-34). The *Dāy.* passage is quoted on pp. 680 and 723 of 48 Cal. 643 (F. B.).

1138. अथ बहुवचनमासर्वे स्वस्वमायादर्थं दृष्टारिति न श्रुतिरप्यम् । तथा सति बहु-  
वचनस्य सतोऽप्यतिबहुप्रमाणावन्तराप्यवस्था रयत् । किं त्वेकद्वयस्य वाचनमनलद्वयेभ्याम्  
ब्रह्मदत्ता लभ्यते । ... परिणीतब्रह्मदुक्तवस्तु वाच्यमात्रे तु दासीदुष्टोऽपि कृत्स्नं बृहस्पतिर्ब्रूयन्  
लभते इत्यर्थोऽहं गच्छते । अथ, द pp. 487-488. लिख्यते on वा. II. 138 (Trl. edition)  
quotes the view of some expressed by बृहस्पति in a prose aphorism according  
to which the illegitimate son succeeds, when there is no legitimate son,  
grandson or great-grandson, to the whole estate with the king's permission;  
'अथवपि सः सर्वं राजा दत्तेत् तद्ब्रह्मणा वाचरोपज इत्येके'.

son cannot demand a partition of the joint family property though he is entitled to maintenance as a member of the family provided the father left no separate estate (L. R. 58 I. A. 402). It has been held that if a śūdra keeps a woman of the brāhmaṇa caste as his exclusive mistress and has a son from her, he is not a dāsiputra (but acc. ancient works a cāṇḍāla) and is not entitled to inherit the estate the śūdra father as an illegitimate son. Vide *Ramchandra v. Hanumanth* 37 Bom. L. R. 920 followed in 18 Lucknow 585. Further rules about the inheritance of the illegitimate son when in competition with the widow, legitimate daughter or legitimate daughter's son will be dealt with later on (vide n. 1356 below).

An absent coparcener stood on the same footing as a minor (vide note 1077 above); in modern times he would be subject to the law of Limitation (Articles 127 and 144 of the Indian Limitation Act of 1908).

The wife cannot herself demand a partition, but if the husband himself separates his sons during his lifetime or if the sons claim a partition during the father's lifetime, the wife was entitled to a share equal to that of a son, according to Yāj. II. 115. If there be several wives each gets a share equal to that of a son. There is a proviso that the wife or wives must not be in possession of *strīdhana* property given by the husband or by the father-in-law and that if there is *strīdhana*, then only as much more will be allotted to her as will make her share equal to that of a son (as stated in Yāj. II. 148). The Mit. on Yāj. II. 52 states that at the husband's will the wife also gets a share of the family wealth but not by her own will<sup>1139</sup>. The *Madana-ratna* explains that the meaning<sup>1140</sup> is simply this that the

1139. तसमाद्वर्गविच्छेदा भाषाया अपि द्वावविभागो भवत्येव न स्वेच्छया । यथा वक्षति ययि कुर्वात् ... इति । मिता. ०० वा. II. 52.

1140. वक्ष्य इति बहुवचनान्वयिष्यति स्वांगेन समानमो वृद्धीयात् नु शास्त्रं वृक्ष-  
कुत्वांशो वृक्षः । जायापारपोने विभागो विच्छेदे इति द्वाविचचनविरोधापत्तेः । मदनरत्न (ms.  
folio 91 b). It is curious that the *मदनरत्न* ascribes जायापारपोने विभागो विच्छेदे to  
द्वाविच; this *śūtra* is अस्य. च. सू. II. 6. 14, 16; vide above p. 451 and II. of Dh.  
vol. II pp. 429 and 518 for quotation from *Āp.* and p. 556 for a verse from  
Tai. Br. quoted in Mit. ०० वा. II. 52 about husband and wife enjoying  
together in heaven the rewards of religious acts. नात्र जायापारपोविभाग उच्यते येन  
द्वाविचचनविरोधः स्यात् । किं नु वक्ष्ये वृक्षविभागसमये शास्त्ररत्नसमाश्रित्यान् प्रीतिद्वयवत् ।  
म्य. म. pp. 441-442. It is worthy of note that the म्य. म. p. 510 elsewhere



father when separating from the sons should take for each of his wives a share equal to that of each son, but it is not meant that the husband is to carve out separate portions of the joint property and hand them over to his wives, since such a procedure would be opposed to the *dictum* "there is no partition between husband and wife". The V. P. (pp. 441-42) after quoting this view of the Madanaratna refutes it by saying that Yāj. is not here speaking of the partition between husband and wife but between the father and sons and that the husband assigns to the wife a share as he may give a gift of affection to his wife. It deserves to be noted that the ancient commentator Viśvarūpa (on Yāj. II. 119 of Trī. edition) anticipates modern legislation as he states that the widows of pre-deceased sons and grandsons also should be given the shares that would have been taken by their husbands if living along with his own wives by the father at the time of partition with his sons. Recently by the Hindu Women's Rights to Property Act (Act XVIII of 1937 as amended by Act XI of 1938), it is provided that when after the Act comes into force a Hindu governed by the Dayabhāga School dies intestate or where a Hindu governed by any other school dies living separate property, his widow will be entitled to the same share as that of a son and the widow of a pre-deceased son or grandson shall inherit in the same manner as a son or grandson and further where a Hindu governed by any school other than the Dayabhāga dies having an interest in joint family property his widow will succeed to a Hindu widow's estate as regards the interest he himself had. This last provision brings the law of the Mitākṣarā into line with that of the Dayabhāga and makes the widow of a deceased coparcener a member of the coparcenary and at one stroke does away with the fundamental doctrine of the Mit. about

(Continued from the last page)

refers the sūtras आपापार्श्वे विभागो विद्यते याजिग्रहणादि स्वस्य कर्मसु to गौतम. It further says that the wife's ownership in the husband's property is only technical and not real and that when the husband dies and his ownership in joint family estate lapses her technical ownership comes to an end 'याजिग्रहणादि ... ग्रहेषु चेति गौतमवचनात्पत्वा अपि वज्रनिर्घटिकेपि स्वत्वमुपपन्नं तज्ज्ञातुं किमिति तस्मिन् कल्पितं वृत्ति चेन्न । औपनिषदोऽस्ति न तु तात्त्विकः । पत्न्याः पतिवृत्त्ये स्वस्य जीवदौर्गन्धेकलोलीभावापत्तेः सहाधिकारिकत्वेऽप्यपि न तु आनुषान्तिं दत्तवत् ।' *ibid.*, p. 310 ; समीकृतानुपेक्षे यमोत्तरमुक्तः पुत्रपौत्रपत्न्यः स्वत्वस्य भर्तृभागादर्थः । काश्याः । विश्वकर्म on वा. II. 119.

male coparceners alone taking by survivorship joint family property.<sup>1141</sup>

The mother (or step-mother) also, when the sons come to a partition after the father's death, is entitled to a share equal to that of a son in the coparcenary property.<sup>1142</sup> But she cannot compel a partition so long as the sons choose to remain joint. But her share is liable to be reduced on account of her possession of *stridhana* as in the case of the wife. Vide Yāj. II. 123, Viṣṇu Dh. S. 18.34 and Nār. (dāyabhāga, 12). The Mit. (on Yāj. II. 135) combats the view of some predecessors that the mother does not take a share but only as much wealth as would be necessary for her maintenance, by relying on the words "equal share" occurring in Yāj., Viṣṇu, and Nār. which would be meaningless on that view. It also refutes another view that the mother takes an equal share with the sons when the ancestral property is small, while she takes only as much as would be necessary for her maintenance when the property is large, by stating that this view is liable to the fault of *vidhicārūpya* according to the conclusion established in the *Pūrvamīmāṃsā*, that is, here the same sentence will be interpreted as laying down two different propositions in different sets of circumstances, which is not a legitimate or reasonable way of interpretation. The Sm. C. (II p. 268) held the same view about the mother having no right to a share and was criticized by the *Madanaratna* (by name). Several works like the *Vyavahārasāra* (p. 225) and the *Vivādacandra* (p. 67)<sup>1143</sup> hold the

1141. Vide *Saralambal v. S. Subbarama* I.L.R. (1942) Mad. 630; *Jodu Rosamma v. Jodu Chenchiah* (1943) 2 M. L. J. p. 172 for the effect of the Act XVIII of 1937 on the status of widows.

1141a. जनस्यस्वधना पुत्रैर्विभागं सप्तं हरेत् इति स्मरणात् । अस्वधना पतिस्त्रिज-  
ह्वीधनस्यैव जननी पुत्रैर्जीवद्विभागे द्विजभागे पुत्रौऽसममेवांशं हरेदित्यर्थः । स्मृतिच. II.  
268. This text and the explanation are given also in the *नवमरण* (folio 92 a)  
in the same words.

1142. स्त्रीणो सर्वास्मान्देशस्त्वेष । यथापदेशश्च येष पितृसर्वं विभजेता मातापदेशं सप्तं  
हरेदितापादौ त्वयापि किञ्चिद्दानं विभक्तित्वं । अर्हति स्त्रीस्यस्युक्तो न दाप्ये निरिन्दिषा अदाया  
हि किये माता—इति वीथायनवचनात् । निरिन्दिषा निःसन्धा इति प्रकाशः । अदाया  
अनंशा दायर्थाः । विवादचन्द्र p. 67. The स्मृतिच. (II. p. 267) also relies on वीथा-  
यन. The बी. थ. सू. after the verse विहा रक्षति ... न स्त्री स्वात्मपदमर्हति has the sūtra  
निरिन्दिषा कदापाश्च स्त्रियो माता इति श्रुतिः (II. 2. 33). In the वे. सं. VI. 3. 3. 2  
we have the words 'तस्मात्स्त्रियो निरिन्दिषा अदायादीरपि यापार्तुं उपहितवरे वदन्ति ।'.  
Vide Bühler's note in S. B. E. vol. 14 p. 231 on the confusion about  
this text of Baud. मनु. IX. 18 is 'निरिन्दिषा कदाप्याश्च स्त्रियोऽनुत्तमिति रिधतिः ॥  
on which मेधातिथि explains 'इन्दिष्ये कीदं विषयज्ञाकलादि'.





If a person had several wives and several sons from each wife, some of the texts prescribed from very ancient times that the sons should divide according to the wives or mothers (i. e. *pāṇībhāga*, or which is practically the same thing, *mātṛbhāga* was recommended), though the generally recognized rule formerly as well as now is to divide according to the number of sons i. e. *padabhāga* (ignoring the fact of their being born from <sup>1144</sup> different mothers). For example, Gaut. 28. 15 recommends that partition should be made by grouping the sons according to their mothers and then allowing a special share to the eldest among each group of sons. Both Br. (S. B. E. 33 p. 372 verse 15) and Vyāsa <sup>1145</sup> lay down that if there be many sons sprung from the same father, who are equal in caste and number but who are the sons of different mothers, a division according to mothers may be legally made. Such a partition on the basis of mothers is recognized in rare cases even now on <sup>1146</sup> the ground of custom in certain places and among certain castes.

A paternal grandmother or step-grandmother cannot herself demand a partition, but when a partition takes place between her son's sons, her own son being dead or when it takes place between her son and the sons of a deceased son she is entitled to a share. A text of Vyāsa says <sup>1147</sup> "the childless wives of the father are declared to be entitled to a share equal (to that of a son) and all grandmothers are declared equal to the mother". The Allahabad and Bombay High Courts hold that the grandmother is not entitled to a share when a partition takes place between her son and his sons, while the High Courts

1144. अतिमानु वा स्वस्वपर्ये भगविक्षेपः । गो. 28. 15.

1147. समानजातिसंख्या ये जातस्त्वेकेन दूतवः । विभिन्नमातृकास्तेषां मातृभागः नदास्यते ॥ व्यासः । यथेकमाता बहुवः समाना जातिसंख्या । सायन्यायैविभक्तत्वे मातृभागेन धर्मतः ॥ बृह. ; both are quoted by दाबभाग III. 12, परा. मा. III. p. 303, च. अ. p. 102, वि. इ. p. 473 (बृह. only).

1148. Vide *Pulaniappa v. Alayan* 43 I. A. 339 for a case from the Madras District in the Madras Presidency, where a custom among the *chettis* of allowing a partition on the principle of *pāṇībhāga* (division of property according to wives or mothers) was upheld.

1149. अनुमत्सु पितुः पत्न्याः समानांशः प्रकीर्तितः । पितृमहत्त्वं सर्वमिता मातृमहत्त्वं प्रकीर्तितः ॥ व्यास उ. by अपराकः p. 730, दाबभाग III. 3, 2 p. 68, स्मृतिच. II. p. 267, वि. इ. p. 484. The मद्र. पा. (p. 664) remarks: यद्वा तु पितृमहोपाजितं तमे पितृपुत्रो विभज्य दृष्टीकृतत्वा पितृमहत्त्वान्न सपुत्रा पूर्वाकस्मिन् समोऽहं लभते मातापत्येन समे हरदिपुत्रकलात् पितृमहोपाजितवृत्त्याप्यम् । यद्वि पितृमहत्त्वपदद्वयं तर्हि स्वातन्त्र्यं प्रीतिवृत्तं लभते नाशब्दः । तथा पैतामहपदविभक्तौ मातांशं न लभते किं तु स्वाभरणादिकमेव ।



of Calcutta and Patna hold that she is entitled to a share even in this last case<sup>1150</sup>.

On account of certain bodily, mental or other defects and certain conduct also persons were excluded in ancient India from demanding a share on partition and also from taking by inheritance. Gaut. 28. 41, Āp. Dh. S. II. 6. 14. 1, Vas. 17. 52-53, Viṣṇu Dh. S. 15. 32-39, Baud. Dh. S. II. 2. 43-46, Kaut. III. 5 speak<sup>1151</sup> of various grounds of exclusion from partition (and inheritance) such as lunacy, idiocy, impotence, excommunication for grave sins or lapses of conduct, blindness, incurable disease, entering a different āśrama (viz. that of forest hermit or *samnyāsa*). These grounds of exclusion probably arose from the fact of the persons labouring under them being regarded as incompetent to perform religious acts and from the close connection between property and its use for religious purposes. Jaimini<sup>1152</sup> (VI. 1. 41-42) lays down two propositions, viz. that one who is suffering from an incurable or irremediable bodily defect is not entitled to undertake vedic rites, such as Agni-hotra, but that one who has some defect which is remediable may engage in them and Śabara gives a blind man, a deaf man and a cripple as persons who are incompetent to engage in Vedic rites. The story of the brothers Devāpi and Śantanu ( vide

1150. Vide *Vithal v. Prahlad* 39 Bom. 373 (partition among grandsons), *Kanhaiya Lal v. Gauri* 47 All. 127 (partition between grandsons), *Babuna v. Jagat Narain* 50 All. 532 (partition between one son and his predeceased brother's son), in all of which the grandmother was held entitled to a share. See *Sheonarain v. Janki Prasad* 34 All. 305 (F. B.), *Jamnabai v. Vasudev* 54 Bom. 417 for the proposition that in a suit for partition between father and his son only the paternal grandmother is not entitled to a share; but vide *Dadri Roy v. Bhugvat* 3 Cal. 649, *Krishnatal v. Nandeshwar* 4 Pat. L. J. 39, 42-44 (for the opposite proposition that the grandmother would be entitled to a share in a partition between her only son and the latter's son). In view of the fact that Vyāsa declares the grandmother to be equal to the mother it appears that all grand-mothers, whether sonless or not, should secure a share.

1151. जगद्धीर्षो वतंसौ । वी. 28. 41; एकधनेन वषेड गोषावित्ता जीवन् दुहेन्यो द्वापं स्वधनेन सन्तं द्वीधन्यन्तं पतितं च परिहास्य । अथ. व. सू. II. 6. 14. 1; अतीत्यपहारान्धासाध्याहर्षप्रियुः । अन्धजगद्धीर्षप्रसन्निसपाधिताश्च । अकर्मिणः । पतितवज्रात्मजर्षम् । वी. व. सू. II. 3. 43-46; अर्द्धशास्त्राध्वसास्त्रयताः । द्वीधन्यन्तपतिताश्च । वसिष्ठ 17. 52-53; पतिगद्धीर्षाक्षितित्वरोपकित्तास्तदभाषहारिणः । निधुधर्मसूत्र 13. 32; पतिक पतिताज्जाताः द्वीषाध्वानेकाः । जलोन्मत्तामधकुडितश्च । अपर्शाश्च III. 5.

1152. अणुहीनश्च तद्वर्मा । उत्पन्नौ नित्यसंयोगात् । जै. VI. 3. 41-42.

H. of Dh. vol. II p. 109) as unrated in the Bṛhad-devata<sup>1151</sup> states that the elder brother Devāpi suffered from a skin disease and so refused the kingdom which went to his younger brother Śantanu. We know from the Mahābhārata that Dhṛtarāstra who was blind from birth, though elder, had to give up the kingdom in favour of his younger brother Pāṇdu<sup>1152</sup>. The Mīt. (on Yaj. II. 135) energetically combats the view put forward by some predecessors that all wealth is meant for sacrifices. They relied on two smṛti passages<sup>1153</sup> "all *dravija* (all kinds of wealth or movable property) has been created for the sake of sacrifice; therefore all those who are not competent to perform sacrifices are not entitled to share ancestral wealth but are only entitled to food and raiment. Wealth has been created for sacrifices; therefore one should employ it (or spend it) on purposes of dharma and not on women, fools and irreligious people". Kāt. (852) and Bṛ. (S. B. E. 33 p. 371 verse 10) contain similar remarks. The Mīt. does not accept this proposition, which argues that on that hypothesis no gifts (apart from sacrifices) that are recommended by the śāstras will be possible, nor can one accomplish two of the *puruṣārthas*<sup>1154</sup> viz. *artha* and *kāma* (as required by Gaut. IX. 46, Yaj. I. 115) and that the verses quoted above only mean that whatever wealth is collected for sacrifices should be spent only for that purpose even by the sons of the man who collected it, since a smṛti text condemns generally everyone who does not spend wealth collected for a sacrifice for that purpose to becoming a crow or a *bhūta* (a cock or water fowl) in the next life. The Mīt. further argues that the view would be opposed to the conclusion of Jaimini III. 4. 20-24 that the Vedic injunction "one should wear gold on one's person" is merely *puruṣārtha* and not '*kravārtha*'. Aparārka

1151. लघ्वीराजसुवर्णमन्त्रिणसुतोऽभवत् । बृहदेवता VII. 156; न राजसुवर्णमन्त्रिणमि लघ्वीराजसुवर्णमन्त्रिणः । बृहदेवता VIII. 5.

1152. अन्धः करणारिनाम्न वै राजा गिरा तव । ज्योतिष्ये 147. 39; vide अन्धिर्ये 100 (chap. 100 of cr. ed.) for the congenital blindness of धृतराष्ट्र.

1153. यज्ञाय इन्द्रसुवर्णं तन्नामधितुतास्तु वै । अरिश्मभाजस्ते सर्वे शासन्त्यावृण-  
भाजनाः । यज्ञायै विहितं तिलं तस्मात्तद् विनियोजयेत् । स्थानेषु धर्मकुटुम्बेषु न क्षीयुर्न विधायै ॥  
q. by मित्रा. on ता. II. 135, परा. म. III. p. 334; compare शान्तिपर्व 26. 25. यज्ञाय  
सुवर्णं यमानी धात्रा यज्ञाय ह्यहः इवो रक्षिता च । तस्मात् सर्वे यज्ञं हवीषमोदं धने न  
क्रामाथ हितं यजतस्तु ॥ The च. मयूख p. 157 appears to ascribe the verse यज्ञायै to  
देवत and the द्वावत्तर p. 172 ascribes it to कार्यायन. Vide यथा यथा विभागान्  
धने वामाधेतामिदम् । तथा तथा विभागान् विद्वद्भिर्गणितम् ॥ कार्त. 852 q. by स्मृतिच.  
II. p. 263, परा. म. III. p. 492.

1154. Vide H. of Dh. vol. II, pp. 8-9 for the *puruṣārthas*.



also holds the same view<sup>1157</sup> and adds that women have the authority to perform pūrtadharmā (acts of charity such as construction of wells, temples &c.). Vide H. of Dh. vol. II, pp. 844-45 for *īṣṭa* and *pūrtā*.

The most famous passages on the grounds of exclusion from inheritance are Manu IX. 201, Yaj. II. 140 and Nār. (dāyabhāga, 21-22). Manu IX. 201 provides<sup>1158</sup> "impotent persons, outcasts (pūṭila), persons blind or deaf from birth, insane persons, idiots, the dumb and those deficient in any organ (or sense) are

1157. सर्वस्यायं धर्मोत्तमैर्ज्ञातं पञ्चाभासात् । येन हि-ज्ञाद्वं रात्रीर्दीक्षितो  
युतिं चर्षित-हस्तेनमादिचनविहिता तेन धर्मोपनिः कृतार्था । अथवा नु पुत्रप्रापेन ।  
अपराधे p. 743.

1158. अनङ्गो ऋषिपतिर्ना ज्ञान्यन्धपिरो तथा । उन्मत्तजडमुखाश्च ये च कश्चिद्विर-  
विद्रवाः ॥ मनु IX. 201 ; ऋषीणाम् पतिवस्तुजाः यजुस्तुल्यन्मनो जडः । अपोऽपचिकित्स्योपाया  
भर्तव्याः स्मृतिरंशकाः ॥ या. II. 140 ; युते पितरि न ऋषिब्रह्मजन्मसङ्गहायकाः । पतिवः  
पतिव्यापये लिङ्गी द्वापदोभ्यामिनः ॥ तेषां पतिवर्ज्येभ्यो भक्त्यर्थं प्रदोषते । तत्तुल्यः पितृद्वारांश्च  
सुभक्त्यर्थं दोषयिताः ॥ देवल. Q. by द्वापदोभ्याम् V. 11 p. 102 (which explains लिङ्गी as  
यज्जित्तादि), वि. र. p. 490 (लिङ्गी अतिशयेन कपवस्तुचारी), स्मृतिच. II. p. 272 ;  
पितृद्विह पतिवः पण्डो यश्च स्वादौपपातिकः । औरसा अपि मैत्रेयं लेभ्यन् लेवजाः कुतः ।  
दीपतीवामवयस्तां जडोन्मत्तजन्मपण्डवः । भर्तव्याः स्मृः कुले चैते तत्पुत्रासर्वभूमिनः ॥ नारद  
(वार. 21-22). पितृद्विह is variously explained ; वि. र. p. 489 'द्वेषश्च पितरि जीवति  
मारणाद्विजलः युते तु तद्विषयेनोदकाद्यदानरूपः' ; 'पितृद्वेषो नाम असौ यम पिता नेत्येवंप्रथः'  
सरस्वतीविजलम् p. 364. In नारद, the मित्ता, द्वापदोभ्याम्, अपराधे, द्वापदोभ्याम् and नर, p.  
read औपपातिकः (which means 'one guilty of उपपातिक'). Vide मनु. XI. 59-66  
and निष्कण्ठधर्मसूत्र chap. 37 for long lists of उपपातिकः such as मोषध, पारदार्यं,  
अवापदोपायन &c. The स्मृतिच. II. p. 270 reads अपपातिकः and explains अपपातिकः  
अपपातिकः ... अपपातिकस्य महापराधेन वस्तुविरिक्तुत्तरः and quotes मनुद्विखितमय in  
support 'अपपातिकस्य रिक्थपिण्डादुक्तानि निवर्तन्ते' which is read as अपपातिकस्य by  
the द्वापदोभ्याम् V. 3, p. 100, and अपराधे p. 720. The मदनराम and च. मयूख p. 163  
read अपपातिक in नारद, while कल्पतरु read अपपातिक and explained it as 'राज-  
वशादिदोषेन वस्तुवैरिणं पदारवर्जनं कृतम्' (vide द्वापदोभ्याम्). The मदनराम gave  
this very explanation for अपपातिक. The वि. र. reads अपपातिक (p. 489) and  
gives the same explanation of it as the कल्पतरु. The च. मयूख p. 163 says  
it is better to explain अपपातिक (derived from पादा meaning 'sea voyage')  
differently, disapproves of the explanation of अपपातिक given by the मदनराम  
on the ground that for one guilty of sedition or high treason the breaking  
of a jar or of excommunication is not prescribed and that अपपातिक means  
'one who goes to another continent or country by sea in a vessel for trade  
and the like'. Constantly engaging in sea voyage was one of the matters  
forbidden in the Kallāga; vide 'द्विजराष्ट्री तु नीपातः क्रोधिरवाप्यसेवतः' quoted  
by नीलकण्ठ, which verse is quoted as from आदिविष्णुराज by हेमाद्रि vol. III. 2  
p. 667. नीलकण्ठ is wrong about high treason. गौतम (20. 1-4) declares that  
one should desert even one's father who is guilty of regicide and describes a  
ceremony in which an unclean vessel is brought by a slave or servant from  
a dirt heap and is filled with water from a jar carried by a female slave and  
then the vessel is struck with the foot and emptied with the words 'I make  
so and so one who will get no water from me.'

entitled to no share". Yaj. II. 140 declares that the impotent, the outcast and his son, a lame man, a mad man, an idiot, a blind man and one afflicted with an incurable disease are not entitled to a share. It will be noticed that Yaj. expressly excludes the son of an outcast, as do also Baud. and Devala. Nār. (dāyabhāga 21-22) says 'one hostile to his father, an outcast (*patih*), an impotent person; one who goes to another continent by sea (from India)—these even though they be *naraya* sons shall not get a share; how can a ksetraja (a son of the wife raised by another person by appointment) get a share (if he has these defects) and persons afflicted with long standing (like phthisis) and severe diseases (like leprosy); persons who are either idiots, insane or lame—these must be maintained by the family, but their sons are entitled to a share'. These verses of Manu, Yaj. and Nār. have been quoted and explained in numerous decisions of the courts in India, but all such cases are mostly of academic interest now since the passing of the Hindu Inheritance (Disabilities Removal) Act of 1928 and hence need not be dwelt upon here. The Act (XII of 1928) applies to the whole of British India except to persons governed by the Dāyabhāga school and provides that no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect. This Act is not retrospective and does not confer on any person any right in respect of any religious office or service or any right to the management of any religious or charitable trust which he would not have had before the Act. Therefore under the Act the only defects that would disqualify a person governed by the Mitākṣarī school from claiming partition or inheritance are congenital lunacy and congenital idiocy. Under the Dāyabhāga school the grounds of exclusion will still remain as before except as modified by judicial decisions and by other Acts. An important question under the Mit. school arises in this way. What is the exact position of a son that is congenitally idiotic or insane. Both Manu (IX. 201 and 203) and Yaj. (II. 140, 141) declare that they are *manāsa* or *nirāśā* (not entitled to a share of the ancestral estate), but must be given maintenance and if maintenance be not given by those who are liable to give it, they would incur sin (as Manu IX. 203 expressly says) and that the sons of disqualified persons take a share, if they are themselves free from defects. If A has a son B who is congenitally idiotic, is B still a copar-



cener of A (though not entitled to a share or to claim partition) so that A cannot make a gift of the whole or a portion of the property or a bequest thereof to his widow? This question arose in *Anurthamanal v. Vallimayil*, I. L. R. (1942) Mad. 807 (F. B.), where it was decided that, when A made a will in the above circumstances bequeathing all family property absolutely to his widow and two sons were born to the disqualified man B after A's death, the father had no power to make a will as the disqualified member B was still a coparcener (though not entitled to a share) and that he transmitted the heritage to his sons. The chief ground of the decision was a passage of the *Sarasvativilāsa* (explained on pp. 817 and 828-830) which is quoted below<sup>1159</sup>.

The grounds of disqualification apply to males and females alike, as stated by the Mit. on Yaj. II 140<sup>1160</sup>. A few remarks will be made on *patita* and his son. The commission of every sinful act did not make one *patita* as the word was technically understood. There were various grades among sins, which will be described in the section on *pātakas*. The grave sins were differently enumerated by different ancient writers. In explaining<sup>1161</sup>

1159. अनन्तो ब्रह्मपतिवामिनि द्वित्योक्त्या दायाहं द्यातुमिः निवृत्तद्वारेणो गोविद्वाराहो गोमो । जारण्यस्यिराविनि द्वित्योक्त्या तयोर्द्वारोक्त्येव किं चेदनुक्त्यापि योर्ध्या विवाहसंस्कार-  
सद्भावात् । तदाशब्दपरमेण यदुक्त्यादयः विवाहसंस्कारार्हाचेद्वाराः पोषाद्येति रहस्यम् ।  
उन्मत्तमूकाश्चेति सद्यश्चपोक्त्या तेषु अर्हत्वा एव वांशहराः । विवाहार्हा न चेदिति शेषः ।  
न. नि. p. 369. The S. V. does not appear to be laying down any novel proposition. All that this passage appears to mean is that though these disqualified persons cannot themselves enjoy a share, yet they do have a share (in theory) and if they can marry or are eligible for marriage their sons that are free from defects do take a share and that one cannot lay down a sweeping proposition that all congenitally dumb or insane persons or idiots can marry, but that there are degrees in these defects and in certain extreme circumstances these disqualified persons cannot marry. Vide *Madras Law Journal* for 1942 (Journal portion pp. 63-82) for a reasoned criticism of the F. B. case.

1160. पतिवद्विदुः स द्वेद्विदुः सतिवद्विदुः । अथ पतिवद्विदुः सतिवद्विदुः सतिवद्विदुः  
द्विदुः सतिवद्विदुः सतिवद्विदुः । निता. on या. II, 140.

1161. सप्त सर्पादः कवचसक्तकुलामिकादिद्वन्द्वद्वयोः मात् । अ. N. S. 6: सप्त एव  
सर्पादः कवचः कवचः चक्रः । सामान्येकार्थे अधिगच्छन् अर्थवान् भवति । एतेषु सत्पारोक्ष्ये  
ब्रह्महत्या धनहत्या दुष्कृत्य कर्मणः पुनः पुनः सेवो वातके अङ्गुलीयमिति । निरुक्त. VI. 27.  
The meaning of this Rgveda verse is doubtful. The Nir. distinguishes  
between ब्रह्महत्या and धनहत्या. For the various meanings of पुनः, vide H. of  
Dh. vol. II p. 131 n. 290 and p. 142 n. 334. In the Nir. पुनः probably  
means 'foetus', as it does in Cant. XXI. 9 'पुनश्चिन्तितो नोन्मत्तमो वा' की  
तति. Nā. 20, 21 ('पुनश्चिन्तितो नोन्मत्तमो वा' वाच्यं इत्यादि भवत्यपिज्ञाने च गर्भम्.)  
appears to give two senses to 'पुनश्च' (killer of a brāhmana or killer of a  
foetus when its sex is not known).

Rg. X. 5.6 "the wise made seven boundaries (restrictions) by transgressing even any one of which a man becomes sinful", the Nirukta VI. 27 enumerates the seven sins as "theft, violating the bed (of the *guru*), murder of a brāhmaṇa, murder of a bhṛūṇa, continual performance of sinful acts, telling a lie as to a sinful matter". In the Tai. S. II. 5. 1. 1, Śat. Br. XIII. 3. 1. 1. and other Brāhmaṇa texts, the murder of a brāhmaṇa seems to have been regarded as the gravest of all sins (vide H. of Dh. vol. II p. 147 and n. 333). In the Chandogya<sup>1162</sup> Up. V. 10.9 the five great sinners are declared to be the thief of gold, the drinker of liquor, the violator of the guru's bed, the murderer of a brāhmaṇa and one who associates with them. Gaut. (XXI 1-3) declares that the murderer of a brāhmaṇa, the drinker of liquor, one guilty of sexual intercourse with the wife of his *guru* (elder or teacher) or with women who are the sapindas of his father or mother, a thief (who steals a brāhmaṇa's gold), an atheist, one who continually does forbidden acts, one who does not abandon a *patita* (son or the like through affection) and one who deserts his relations though they are not *patita* are *patitas* and so is one who incites another to commit a grave sin and also one who associates with a *patita* for a year (as regards a vehicle, a seat and bed). Āp. Dh. S. (I. 7. 21 8-11) contains a longer list of grave sins (*pataniga*). Vaa. (I. 19-21) states that there are five grave sins (*mahāpātakās*) viz. violating the bed of the *guru*, drinking liquor, murder of a learned brāhmaṇa, robbing a brāhmaṇa of gold and contact with a *patita* by being his teacher or pupil or priest or by contracting a matrimonial alliance with him. The Baud. Dh. S. II. 1. 50-56 has a somewhat different list of *pataniga* actions viz. sea voyage, robbing a brāhmaṇa of his wealth and misappropriating a deposit, perjury for land, trading in (forbidden) articles, service under a śūdra and having a child from a śūdra woman. Manu XI. 34, Yaj. III. 227 and Viṣṇu Dh. S. 35. 1 enumerate the five well-

1162. स्तेनो विद्वदस्य गुरो विषय गुरोस्तत्पत्न्यासम्बद्धा र्वन्ति वृत्ति चत्वारः पञ्चमयाचरन्तेति । छान्दोग्योप. V. 10. 9; बृह. उप. IV. 3. 22 mentions as great sinners the thief and the *guru*-breaker. Though some later smṛtis employ the word स्तेय, it is always restricted by the commentators [e. g. Mit. on Yā. III. 227] to the theft of brāhmaṇa's gold. Vide H. of Dh. vol. II p. 580 for ancient texts asking a person to desert one's father who is *patita* or a regicide &c., but never his mother, even though she be *patita*. Vide विष्णुधर्मसूत्र 37. 1-3. 'अथ त्याग्यः । मात्यः । पतिवतः । त्रिदश मनुजः त्रिदशभ्यः शुद्धः । सर्वे पृथगो-न्याय्यपतिव्याहताः ।'



known mahāpātakas, viz. murder of a brāhmaṇa, drinking of liquor, theft, incest and continuous association for a year with these. Association with any sinner of any sort for one year made the associator guilty of the same sin (Yāj. III. 261). *Samsarga* or *samyoga* (contact or association) was of various kinds. Mān. XI. 180 (= Śānti 165.37 = Baud. Dh. S. II. 1. 88 = Vas. 1. 22) states that a person who associates with a *patita* for a year as regards using the same vehicle or seat or taking food with him in the same row becomes *patita*; but he becomes *patita* at once by being his sacrificial priest or by being his teacher of the Veda or by entering into<sup>1163</sup> a matrimonial alliance with him. Vṛddha-Bṛhaspati<sup>1164</sup> (quoted by Mītakṣarā on Yāj. III. 261) states that association (*samsarga*) with a *patita* is of nine kinds viz. occupying the same seat or bed, taking dinner in the same row with him, cooking food in his cooking pots, partaking of cooked food prepared by him, being a sacrificial priest or employing him as a priest, being his teacher of the Veda or making him one's teacher of the Veda, giving him one's daughter in marriage or taking his daughter in marriage, taking food with him in the same pot. Devala<sup>1165</sup> declares that sin is passed on from one man to another by conversation (with a sinner), by touching him, by his breath (coming in close contact with one's nose), by occupying the same vehicle (horse) or seat, by eating (in his company), by being a priest for him or by making him one's priest, by being his teacher of Veda or making him one's teacher or by matrimonial alliance. The same causes that led to a male being *patita* operated in the case of a woman to make her *patita*; there was one additional cause viz. a woman became *patita* by sexual connection with a male of a lower class than herself (Gaut. 21. 9, Yāj. III. 297 and Śaunaka<sup>1166</sup>). The ancient sages were very considerate even

1163. सर्वसंज्ञेन वसति पतितेन स्नातृत्वरत्नं । एकयानभोजनान्नशयने । श्रीकर्मव-  
मोर्त्तवैः सम्पन्नेभ्यस्तु सद्य एव । निष्ठा. ३. ३-५. 'श्रीकर्मवैदं पात्रगन्धिपीयते मौक्त्यसुख/क्षयदेन  
शुद्धमवस्थेनावापनम्' मिता. on वा. III. 261.

1164. वधस्य दृष्टदृष्टपतिः-पात्रसम्पन्नं पतिवतर्माण्यपात्रमभिभवम् । पात्रमावा-  
पने योनिस्तथा च सहभोजनम् । वधस्य सङ्कटं भोक्तुं न कर्तव्योऽयमिह सद्य । मिता. on वा.  
III. 261 (printed text reads संकटक for वधस्य, but this seems to be wrong if  
we look at the explanation), अथर्वसं. p. 1085, सूत्र. १. p. 587 (both ascribe  
to बृह.). These verses are ascribed to देवत in दीपकलिका p. 99.

1165. संज्ञापरपरोनिःश्रावसद्यवागमनशयनात् । पात्रमावापमाद्यौनात्वायं संज्ञा-  
नो वृत्ताम् । वाजने योनिस्तम्बायै स्नातृत्वायै सहभोजनम् । कुत्वा सद्यः पतितेन पतितेन न  
संज्ञः । देवत p. 5 by मिता. on वा. III. 261, अथर्वसं. p. 1087.

1166. वधस्य शौनकः । दृष्टवत्तु वाणि पतनमिमितानि श्रीवागदि तान्येव । आद्यापी  
ईश्वरगोत्रेवागमविज्ञं पतितेन । मिता. on वा. III. 261.

to fallen women. They provide that even women that are *patita* and have not yet performed the proper penance were not to be cast on the streets, but they were to be given a hut (near the house) for residence and bare maintenance that would keep body and soul together and were to be guarded against further lapses (Yaj. III. 296). Vide H. of Dh. vol. II pp. 571-573.

How far unchastity will debar a female from inheritance will be discussed a little later on. Adultery in general was an *upapātaka* only according to Manu XI. 59 and the ordinary penance for it was *cāndrūyama* or *govrata* (Manu XI. 117). But if the adultery was with a person of low caste, the woman became *patita* and would not have been entitled to a share on partition (as a wife or mother) under the old Hindu Law.

In the case of those guilty of grave sins who did not perform the *prāyascittas* prescribed for such sins there was a peculiar procedure called *ghatasphoṭa* prescribed for excommunicating them and severing all connection with them and treating them as dead, which has been described in H. of Dh. vol. II p. 388. Vide Gaut. 20. 2-7, Manu XI. 182-184, Yaj. III. 294. But when the sinner performed the appropriate *prāyascitta* (penance), the *smṛtis* declare that he became fit to be associated with (*vyavahārya*), he was to be welcomed by his relatives who were to take a bath along with him in a holy river or the like and who were to throw in the water an unused jar filled with water, he should offer grass to cows in the midst of his relations, they were not to find fault with him later on. Vide Manu XI. 186-187, Yaj. III. 295, 299, Vas. 15. 20, Gaut. 20. 10-14 (which prescribes the recital of certain Vedic mantras and the offering of clarified butter into fire). Āp. Dh. S. I. 9. 24, 24-25 and I. 10. 29. 1-2 prescribe for the sinner who kills a *guru* or a *śrotriya* that has performed *soma* sacrifice or a *bhrūya* certain observances till death, but declare that such a person can never get rid of the loss of the right of association with all people, that there is no return for him to his relatives.<sup>1167</sup> In the *Nirpaya-sindhu* (III Uttarārḍha pp. 567-68) and in the *Dharmasindhu* (III Uttarārḍha pp. 453-54) the rite of *ghatasphoṭa* for a *patita* and the rite for taking him back are concisely described.<sup>1168</sup>

The *smṛtis* state that when a man knowingly committed a sin, penances did not necessarily remove the otherworldly con-

1167. सुवे ह्येष स्त्रोत्रिदे वा कर्मसुमात्रमेवेति विधिर्नोत्तमादुच्छ्रयमाश्रयेत् । नारदा-  
स्मिन्नादि प्रत्यापत्तिर्विद्यते कर्मस्य तु निर्हारेण । आप. च. सू. I. 9. 24. 24-25.

1168. Vide Appendix.



sequences of the sin altogether but the sinner became fit to be associated with (Yāj. III. 226). In the case of the *patita*, even his son born after he committed a grave sin was held to be *patita* by most writers of *smṛiti* (Yāj. II. 140, Viṣṇu Dh. S. 15. 35-36, Kaut. III. 5)<sup>1169</sup>. But in the case of the daughter a difference was mercifully made. Vas. (13. 51-53)<sup>1170</sup> states "the sages say that one born of a *patita* becomes a *patita*, except a female child, since she is to go to another (person as his wife); one may marry her without accepting any wealth (of her *patita* father) along with her". Yāj. III. 261 also says that the daughter of a *patita* may be married after making her fast and after making her leave everything (belonging to the *patita* father) in her father's house. Viśvarūpa (on Yāj. III. 257) quotes a prose passage from Hārta to the following effect: the daughter of a *patita* should have fasted one day and night, should take a bath without clothes, should put on white and new garments in the morning, should loudly repeat thrice 'I do not belong to him (my *patita* father) nor is he anyone to me' and then she may be married at a sacred place (river etc.) or in one's (the bridegroom's) house.

These rules about a *patita* led to this result that if a Hindu changed his religion or was excommunicated or was made an outcast for some lapse that his caste looked upon with great disfavour, he was deemed to have lost his rights of partition or inheritance. The Caste Disabilities Removal Act (XXI of 1850) abrogates these rules of the ancient<sup>1171</sup> Hindu Law.

1169. तेषां चौरताः पुत्रा भ्रातृद्वयजः । न तु वधनीयस्य वधनीये कर्मणि कृते लभ्यत-  
सौवर्षः । विष्णुधर्मसूत्र 15. 34-36. On वा. II. 140 the मनु, वा. 681 explains: तस्यः  
पतितादङ्गत्वापत्तिनादुपपन्नः.

1170. पतितेनोपपन्नः पतिना भवतीत्यङ्गत्वात् त्रिधाः । सा हि वरणाभिनी । तामोरिषा-  
धुषेयतु । पतिव्र 13. 21-23; कर्णः समुद्रदेहेषां सोपवासामङ्गिकनाम । वा. III. 261, तथा  
च द्वावर्तः । पतितस्य तु कुमार्यं विष्णुनामाङ्गत्वात्तोरयोपदिता यतः सुकृताहनेन वाग्मसा-  
व्याज्य माहनेषां न धर्मेन इति त्रिचक्षेरमिषाय मीर्यं समुद्रे ब्रह्मन् । विष्णुधर्मसूत्र on वा. III.  
257. The मनु, on the same verse of वा. quotes this passage (with slight  
variations) as from बृहदारण्यक.

1171. Vide Khanna Lal y. Gobind. L. R. 38 I. A. p. 87 where A and B, being father and son and forming a joint family and A becoming a convert to the Moslem religion, it was held that A did not forfeit his interest in the joint family property and that the only effect of the conversion was that it operated as a severance of A from the family and that one half of the property immediately vested in A and the other half in B. Vide p. 101 where the P. C. say that the Legislature virtually set aside the provisions of the Hindu Law. The Act of 1850 is felt by many Hindus as a great hardship and should be removed from the statute book. In England the Blasphemy Act of 1698 is still in force.

All the smritis say that those who are deprived of their rights to partition on account of the several defects mentioned are entitled to maintenance out of the family property as long as they are alive (Gaut. 28. 41, Vas. 17. 54, Visnu Dh. 8. 15. 33, Manu IX. 202, Yaj II. 140 etc.). If the disqualified persons want to marry or are married, then their sonless wives that are chaste should be maintained (Yaj. II. 142), but those that are unchaste should be driven out and so also those wives that are hostile to the family; but the Mit. adds that even hostile wives of disqualified heirs must be maintained provided they are chaste. If the disqualified person has an *aurasa* son or *ksetraja* son<sup>1171a</sup> who is free from the defects mentioned above (such as impotence) he becomes entitled to a share of the joint family property and the daughters of disqualified persons are entitled to be maintained in the family and provision must be made for their marriages (Manu IX. 203, Yaj. II. 141). It follows that disqualified heirs could not adopt, since Yaj. II. 141 mentions only *aurasa* and *ksetraja* sons. Many of the smritis did not allow even maintenance to the *putila* and his son (vide Baud. Dh. 8. II. 2. 46, Kant. III. 5, Davala, Visnu Dh. 8. 15. 35-36). Coparceners were prevented from claiming a share at a partition if at the time of the partition they were labouring under the defects mentioned above. But if after partition<sup>1172</sup> the defect which disqualified a member be

1171a. तत्र क्लीबं त्रैविजं पुत्रः सम्भवेत्पक्षेणैवैवमिति । औरसाक्षेत्रजयोर्द्वेष्टण-  
मितरपुत्रव्युदानार्थम् । मिता, on वा II. 141. In former ages a *वेष्टण* too was  
possible in the case of an impotent person. The *अर्थशास्त्र* also (III. 5)  
states सति भार्यायै वैधानपर्यवर्तयितुं यमं हन्तुः । शमाच्छादनमिदं पतितवर्जः । तेषां च  
कुमदाराणां पुत्रे यजमाने सन्ति । पुत्रेष्टुर्वाच्यता पुत्रोत्पत्तिर्वाच्यं इत्युच्यते । a. Manu IX. 203  
allows even impotent persons to marry, though he appears to have disapproved  
of it. A *क्लीब* is indicated, acc. to कलघाटन, by the following signs: 'न मूत्रं  
केनिले परव निष्ठा पालयु निमज्जति । मेदुश्चोत्समादुष्कृतायां होतः क्लीबः स उच्यते । कात्या.  
v. 37. वाचस्पत्य V. 8. p. 102. वारह. (बौद्धिधाम 9-10) states the signs of a potent  
man and in verses 11-15 speaks of 14 kinds of impotent persons. The  
*अर्थशास्त्र* in III. 18 declares that the means of judging about impotence are  
women, foeth of urine and the sinking of the faeces in water. (क्लीबमते  
विश्वः मूत्रकेनैवमु निष्ठा निमज्जन् स). The close agreement between Kaup. and  
Kāi. may be noted.

1172. एतेषां विभागात् यत्नेन दोषनाशान्नक्षयमुपपन्नं न पुनर्विभक्तव्यं । विभागो-  
त्तरकालमप्यपि वादिना दूषयन्निर्दोशे भागनाभिरुच्यते । विभक्त्युक्तो जातः सत्पत्न्या विभाग-  
भागित्वपर्यन्तं समानपक्षेण सति । मिता, on वा II. 140. Vide *Deo Kichou v. Buddi*  
*Prakash* 5 All. 509 (F. B.) and *Abirath v. Bhokhi* 22 Cal. 864 for cases  
respectively of insanity at the time of inheritance barring succession and  
supervening insanity not divesting a person.



removed by medical treatment or the like then the disqualified member was entitled to reopen the partition on the analogy of a posthumous son born after partition. So also if a person is quite free from defect when he takes at a partition a share in joint family property or inherits, subsequently supervening defect does not divest the property once vested in him.

Some of the smṛtis contain rules that appear to be only recommendatory. Āp. Dh.<sup>1173</sup> S. II. 6. 14. 15 says that if even the eldest son or brother were to waste joint wealth in immoral or improper ways he should be given no share ( by the father or brothers at a partition). To the same effect are Gaut. 28. 38 and Manu IX. 214.

Gaut. 28. 43 and Viṣṇu Dh. S. 15. 37 provide<sup>1174</sup> that the sons of *pratiloma* unions ( i.e. of a man with a woman of a higher class ) are to be dealt with like the sons of a brāhmaṇa from a sūdra woman i.e. they would be entitled to maintenance from their father, though *pratiloma* unions were condemned. Kā. ( 862-864 ) provides that the son of a woman married out of her order, one who is born of a *śaṅkṛta* union and one who is an apostate from the order of ascetics do not obtain ancestral wealth; but the son of a woman married in the wrong order takes the ancestral wealth if he is of the same class as his father, and the son of a woman who is not of the same caste as the husband ( but of a lower caste ) and is married in the proper order takes the wealth of the father. But the son of a woman

1173. परस्वधर्मैः द्रव्याणि भविष्यादुपति त्वेदोपि तमभयं कुर्वति । अथ. च. श्र. II. 6. 14. 15; सपत्नीदुषोपवर्गपाप्युक्तो न लभेत्तत्त्वम् । नौ. 28. 38.

1174. शुद्धादुपवर्गप्रतिदोमास्तु । नौ. 28. 43; वलिलोमास्तु स्त्रीषु चोपवर्गाश्चाभासिनः । विष्णुधर्मसूत्र 15. 37; अकर्मोदास्तु त्वैव सप्तोवास्तु वापते । यद्यप्यवर्गान्तरैश्च न रिच्यं तेषु चार्हति ॥ अकर्मोदास्तु त्वैव सप्तोवास्तु वापते । असवर्गप्रसूतश्च कर्मोदायां च यो भवेत् ॥ प्रतिलोमप्रसूता वा तस्याः पुत्रो न रिच्यमाह । वास्तव्यादुपवर्गप्रसूतं देवं तद्वन्मुनिर्मनसः ॥ अकर्मोदास्तु त्वैव सप्तोवास्तु वापते । काल्या. ( 862-864 ) q. by द्वापरभाग V. 14 p. 103, वि. र. p. 491, वि. वि. pp. 133-134, न्य. संपूज्य pp. 163-164. The word *अकर्मोदास्तु* is interpreted in two ways: (1) If a brāhmaṇa married a kṣātrīya girl first and then married a brāhmaṇa girl, both women became *अकर्मोदा* (as the procedure was against Manu III. 12). The son of the kṣātrīya woman in such a case did not take the wealth of his father but only the son of the other woman took it. The other interpretation (given by the स्वधर्मसंपूज्य) is based upon the doctrine of *परिवेष्टन*, for which vide H. of Dh. vol. II, pp. 546-549 and Maps, III. 172. The son of a younger sister married before her elder sister and of the latter married after a younger one were both excluded from inheritance to their father. Kā. ( 862 ) is quoted in *Natha v. Chotalai* 55 Bom. 1 at p. 5.

united with a man in the reverse order of castes does not take the ancestral estate; but the approved view is that he should be given food and raiment till his death by the kinsmen. In case there are no kinsmen such a son takes the whole wealth of his father and if the father left no wealth kinsmen are not bound to maintain him.

Provision must also be made before ordering partition in a suit for partition by a brother for the marriage expenses of the unmarried sister or sisters of the brothers. Here there has been a great divergence of views among the writers of digests and commentaries. Kaut. III.5 (quoted below in n. 1181), Viṣṇu Dh. S. 18. 35 and 15. 31 and Bc. simply state that wealth for the marriage expenses of the unmarried sisters must be set apart. But Manu IX. 118, Yaj. II. 124 and Kāt. (858)<sup>1173</sup> state that the brothers should get their unmarried sisters married by giving them one fourth share. The Mit. explains<sup>1174</sup> that this does not mean that each brother is to give one fourth of his share to the sister (for in that case if there are five brothers and one unmarried sister she may get more than each brother) but that the unmarried sister is to get one fourth of what she would have got if she were a male and that if a person has sons and daughters from wives of different classes then the unmarried daughter of the wife of each class will take one fourth of what her brother from the same mother would have taken. The Mit. further adds that one should not explain that the word "one fourth" is not to be taken literally and that the unmarried sister gets only as much as is necessary for her marriage, since such an explanation is opposed to the express words of Manu IX. 118 and since Manu declares sinfulness as the consequence of not giving one fourth share. The Mit. informs us that its explanation was the same as that of Asahāya and Medhātithi and that Bhārucci gave another explanation (viz. that an unmarried sister was entitled to as much wealth as would be necessary for her

1173. कर्मकालान्दत्तानां चतुर्थो भाग इत्यने । पुत्राणां तु त्रयो भागाः स्वर्ग्यं तत्पथने स्मृतम् ॥ कात्या. १. by द्वापमान III. 35 p. 69, स्मृतिच. II. p. 268, वि. १. p. 494. This text is cited in 53 Mad. 84 at p. 97.

1174. निजादंशाद्दत्तानां चतुर्थो भाग इत्यने । अनेन पुत्रितरोपे शितुर्धर्ममेकभातिग्य इति वदन्ते । न च निजादंशाद् दत्तानां तु तृतीयकमिति तृतीयंशाविवक्षया संस्कारमात्रोपयोगेति इत्थं दत्तेति श्वाक्यान् पुक्तं मनुचमविरोधतः<sup>1</sup> स्वर्ग्येक्षित्यस्तु ... पतिताः स्मृतिविरुद्धाः ॥ ... पतिताः स्मृतिविरुद्धा इत्यकरणे मायवाचकशब्दादुदयं दातव्यता प्रतीयते । निता. ७७ वा. II. 124.



marriage and not to a definite share). The Dayabhāga hold the opinion<sup>1177</sup> that if ancestral wealth was small, the provision for the marriage of the unmarried daughter should be made by giving her a fourth share but if the wealth was ample then she should get only as much as was necessary for her marriage. The Sm. C., V. R. p. 494, V. C. p. 134 follow the view of Bhāruci, while the V. M. (p. 106), Madanaratna and V. P. (p. 456 ff) follow the Mit. The former group particularly relies on the texts of Devala<sup>1178</sup> (wealth necessary for marriage should be given to unmarried daughters from the paternal estate), Sāṅkha (when partition of heritage takes place the unmarried daughter takes the maidenly trinkets, wealth for her marriage expenses and stridhana) and Viṣṇu Dh. S. 15, 31. In modern times the Courts allow no share to unmarried daughters but only provision for marriage expenses and this too is restricted to the unmarried sister of a person who requires or sues for partition and does not hold good as to the daughters of brothers or other collaterals<sup>1179</sup>. In *Bhagwati Shukul v. Ram Jatan* 45 All 297 it was held (at p. 299) that "quarter share" in the text means as much money as will suffice for marriage expenses and that where the daughter was a cripple and blind and all the property was worth Rs. 500 an alienation of the whole of it by the widowed mother for raising a dowry for the daughter was justifiable.

1177. अन्वयने पुत्रैः सत्त्वाद्भादृष्टकृष्ण कन्यास्यन्वयुक्तौ दातव्यः । यथा मनुः स्मृत्यः । ... एवं च भद्रहरपते निराहोचितमं दातव्यं न चतुर्धाशानियम इति सिध्यति । द्वापदान III 36, 32 pp. 69-70. The द्वापदान p. 171 says: एवं तु द्वौपदादानमविवादः कस्यपि निराहोचितद्वन्द्वदानवत् ।

1178. अन्वयस्य विमुक्तं द्वे वैवाहिकं वत् । अमुकस्य स कन्या धर्मेजा दुष्यद्व-  
रेत् ॥ द्वेष ॥ by स्मृतिच. II. p. 269, स्पष्ट. नि. p. 431, परा. मा. III p. 510;  
निमज्जमानं द्वापद्यो कन्यालङ्कारं वैवाहिकं कीदृशं च कन्या लभेत । अङ्ग ॥ by स्मृतिच. II.  
p. 269, नि. र. p. 495, परा. मा. III. p. 511; अनुदानं सविनायुरूपेण संस्कारं कुर्वीत ।  
विशुद्धमर्थ 15, 31.

1179. Vide *Subbayya v. Anant* 33 Mad. 64, where A had a son S by one wife and a son S1 and three daughters D1, D2, and D3 by another wife and S sued A and S1 for partition and D1 was married after the institution of the suit, one-third of the marriage expenses of D1 were deducted from the one-third share of S1 and as regards one-third of the marriage expenses of D2 and D3 (which were yet to be incurred) his share (one-third) was charged with one-third expenses of marriage, but it was held that he was not liable for the marriage expenses of the daughter of his brother S1.

*Mode of partition and allotment of shares.*

Before allotting shares provision must be made out of the joint family property for the payment of joint family debts<sup>1179</sup>, for the personal debts of the father that are not immoral or illegal, for small gifts of affection made by the father, the maintenance of disqualified coparceners and female dependent members and for marriage expenses. Vide Manu VIII. 166 (as to family debts), Yaj. II. 117, Nar. (dāyabhāga 32) and Kāt. 859 (for payment of father's debts and gifts of affection) and 542-43 (for the various legal necessities<sup>1180</sup>). If brothers want to separate and some of them are already married and others are unmarried then provision must be made for the *samskāras* (such as marriages) of the latter from the joint family property. Even Kautilya makes provision for the marriage of unmarried brothers and sisters<sup>1181</sup>. Yaj. II. 124, Nar. (dāyabhāga 33), Br. (S. B. E. 33 p. 373 verse 21) lay down that the *samskāras* (upanayana, marriage &c.) of younger brothers must be provided for out of paternal wealth<sup>1182</sup>.

1179a. कणरिक्वयोः समो विभातः । अर्धशास्त्र III. 3; कर्त्तव्यव्ययं च दत्ता शेषं विभाजयेत् । कात्या. 850 q. by स्मृतिच. II. p. 273, स्पष्ट. नि. p. 440 (reads रिक्त्त for कर्त्त). The verse is quoted in *Ponappu v. Pappavaryyungar* 4 Mad. 1 (F. B.) at p. 49.

1180. कुटुम्बार्थमज्ञकेन यदीति स्पष्टितेन वा । उपहृतमिति च विद्यादायकत्वं तु कतः । कन्याविशालिके चैव देवकार्ये च प्रकृतम् । एतत्सर्वं यदावच्छेदं कुटुम्बेन कृतं यतोः ॥ कात्या. 542-543 q. by अपराक्ष p. 647, स्मृतिच. II. pp. 174-175, नि. र. p. 58. यतोः means प्रभुता.

1181. संनिविष्टसमसंनिविष्टयोर्नैवेदशक्तं द्युः । कन्यान्वयः यदानिकम् । अर्धशास्त्र III. 3; असंस्तुता ज्ञातरस्तु वे स्तुतश्च वर्गीयसः । संस्काराणां आनुभिर्धेयं वैतुकात्म्यव्याख्यानात् । बृह. q. by स्मृतिच. II. p. 269 (तत्तार्जयवित्तुकेषु जातुषु), नि. र. p. 422; असंस्तुतास्तु पास्तु च वैतुकादेव वा यनात् । संस्काराणां आनुभिर्नैवेदः कन्याकाश्च यथाविधि । बृह. q. by स्प. मधुख p. 106, attributed to स्वास by अपराक्ष p. 731, परा. भा. III. 308, स्प. य. p. 154 (all these read वे त्वं वैतुकादेव ते यनात् or तद्वन्मात्). संस्कारः परिणयनम् । तत्पूर्वमेष्टुतैरसंस्तुतानां जातुणां कार्यम् । — अस्मादेव च ज्ञानते साधारणज्ञानात् विद्याचिन्तिताः । विश्वस्य on यज. II. 128 (Tyl. ed.); असंस्तुतानां विद्यादानसंस्कारैरसंस्तुतानां जातुणां भविष्यतीनां च विद्यादानसंस्कारं कृत्वा पश्चाद्विभागः कर्त्तव्य इत्यर्थः । मधु. यज. p. 618.

1182. This rule, according to Yaj. II. 124, was restricted to brothers only and was not to be extended. If, for example, there is a joint family consisting of several cousins with their sons and the marriages of some of the sons of the cousins are performed at the expense of the joint family, then when a suit is filed for partition no provision can be made for the marriages of other sons of the cousins. Vide *Ramlinga v. Narayana* L. R. 49 I. A. 168. In *Jairam v. Nathu* 31 Bom. 54, it was held that in a partition suit

(Continued on the next page)



It has already been seen that a father could during his life time separate his sons from himself and also among themselves<sup>111a</sup> and that he could assign shares of property to his sons. This power of the father is indicated even in the Tai. S. III. 1. 9. 4 (quoted above in note 1055) which refers to the story of Manu having distributed his wealth among his sons. It is argued by Āp. Dh. S. II. 6. 14. 11 that, as this Vedic text (Tai. S.) does not expressly state that any difference was made by Manu as to the shares of his sons, the division must have been equal, that therefore the preference of the eldest son is forbidden by the śāstras and that when the Tai. S. II. 5. 2. 7 states that "they distinguish the eldest by (a larger share of) the wealth" that is not a rule, but a mere *anuvāda* (a statement of fact) and the Vedic passage only recites what some people do in spite of the rule of the śāstras. The general rule, in the absence of express provision to the contrary, is equal distribution, as stated in Jai. X. 3. 53 (*śamam ayid-āśrutāt*) which is relied upon by the *prima facie* view in Mh. on Yaj. II. 265. From the Tai. S. it appears that both practices viz. equal division of property among all sons and giving a larger share to the eldest were wellknown in those far-off ages. Āp. II. 6.

(Continued from the last page)

between father and sons, a minor son is entitled to have provision made for his thread, betrothal and marriage ceremonies out of the joint family property before the property is partitioned. In *Sundrabai v. Shiv Narayan* 32 Bom. 81 it was held that marriage is one of the *manakāras* which both Yāj. and Nārada refer to. In 38 Mad. 556 the same principle was established. But in *Vankatarayudu v. Sivaramkrishnayya* 58 Mad. 126 and in *Pranjivan v. Motiram* 39 Bom. L. R. 1412 it has been held that the decisions in 38 Mad. 556 and in 31 Bom. 54 must be regarded as overruled by the P. C. decision in L. R. 49 I. A. 168, and in 58 Mad. 126 it was held that an unmarried brother is not entitled to have provision made for his marriage in a decree for partition. It is submitted with great respect that these Madras and Bombay decisions are wrong so far as unmarried brothers are concerned, that they go against the express texts of several writers like Kaṇḍiyya, Nārada, Bṛ., Viśvarūpa, Maṇanāṁśījīna (p. 646) and that the Privy Council in 49 I. A. 168 was dealing with the provision for marriages of the children of coparceners and not of brothers.

1112a. It has been held in *Ekalta Subharami v. Ekalta Chenchuragheena* (1945) 1 M. L. J. p. 151 that the paternal grandfather has no power to separate his grandsons among themselves and that it is only the father who has this power.

14. 7 clearly<sup>1183</sup> states that in some countries gold or black corn or black produce of the earth is the (special) share of the eldest. Almost all the sūtras and smṛtis prescribe the rule of equal division among the sons of wives of the same class as the father (vide Āp. Dh. S. II. 6. 14. 1, Baud. Dh. S. II. 2. 2-3, Manu IX 156, Yaj. II. 117, Viṣṇu Dh. S. 18. 36, Kaut. III. 5, Br. S. B. E. 33 p. 371 v. 10, Kāt. 838). Some of these no doubt refer to the special share or provision given to the eldest (called *udbhāra*). Kaut. says "the father in a partition during his own life should not give a special share to one out of several sons, nor should he deprive a son of a share without any cause"<sup>1184</sup> (such as blindness etc.). Kāt. 843 says the same thing in almost the same words. But from certain passages when construed literally (such as Yaj. II. 116, Nār. dāyabhāga 15) it appears that the early Indian father often distributed the ancestral wealth among his sons just as he pleased. Nār. (dāyabhāga 15)<sup>1185</sup> says: "When a father has distributed his property amongst his sons that is a lawful distribution for them (and cannot be set aside), whether the share of one be less or greater than or equal to the shares of the rest; for the father is the lord of all". To the same effect is Br. (S. B. E. vol. 33 p. 370 v. 4) who adds that if they try to alter the arrangement (made by the father) they shall be punished. But later on these passages were either held to apply to former ages (V. Mayūkha p. 99 says so) or to the self-acquired property of the father (Mīt. on Yaj. II. 114) or were so interpreted as to mean that the partition made by the father could not be annulled if it was legal, but if illegal it could be set aside (Mīt. on Yaj. II. 116, Madanaratna, Madanapārijāta p. 646). Nār. (dāyabhāga 16) himself denies authority to the father to give shares to the sons as he pleases

1183. एकधनेन प्रवेष्टं नोपयित्वा । ... प्रवेष्टो वापाद इत्येके । देशविशेषे सुवर्णं कृष्णं मांसं कुर्यान् भोजनं प्रवेष्टव्यम् । ... तच्छास्त्रेतिविधिद्वयम् । मनुः इत्येकं द्वारे परमजडितमिदं देव्यं श्रुते । अथापि तस्मात्प्रवेष्टं पुत्रं धनेन निरवसायमन्तर्विकस्यत्युच्यते । अथापि निरवसायद्वयद-  
मन्तिविद्यादुर्वापयिदो यथा तस्मादुत्पन्नः पशूनां सह चरन्तीति । ... सर्वे हि धर्मयुक्ता भागिनः । आप. ध. सू. II. 6. 14. 1, 6-7, 10-13.

1184. जीवद्विभामे पिता नैकं विशेषयेत् । न नैकमकारणान्निविमर्जेत् । अर्थशास्त्र III. 5 p. 161; जीवद्विभामे तु पिता नैकं पुत्रे विशेषयेत् । निर्भाजयेच्च नैकमकारणकारणे विना ॥ कात्या. 843 q. by द्वायभाष्य L. 84 (p. 56), स्व. च. p. 439.

1185. निर्वैष तु विमर्का ये हीनाधिकसमैर्धनैः । तेषां स एव धर्मः स्वास्तुवन्द्य हि पिता वसुः ॥ नारद (द्वयभाष्य 15); समन्वयमाधिका भागाः विधा येषां एकस्थिताः । तेषां नै पालनीयं विनेषाले स्वरूपया ॥ बृह. प. by अथर्शाह p. 717, स्मृतिच. II, p. 261, स्व. वि. p. 419, वि. र. p. 468 (ascribes to नारद, बृह, and का.). The sv. मनुष्य (p. 99) says 'यदपि नारदः—पिबेव ... मनुः—इति तदुपायतारदम्' ।



when he is suffering from diseases, is angry (with a son or sons), or is engrossed in pleasures or pursues paths opposed to śāstras.

The eldest son has received special treatment in all ages down to modern times (vide p. 566 above). That treatment took various forms. Sometimes the texts say that the eldest son took the whole estate. Āp. II. 6. 14. 6, Manu IX. 105-107, Nār. (dāyabhāga 5) refer to this view. Manu (IX 105-107) allows the eldest son to take the entire paternal estate, provides that the other sons should depend for their maintenance on the eldest son as on the father, remarks that the eldest by the mere fact of his birth enables the father to free himself from the debt to the ancestors and that therefore he (the eldest) deserves to get from the father the entire estate.<sup>1186</sup>

Another mode of dealing with the privileges of the eldest son was to give him some excellent or valuable article and then to distribute the rest equally. The Tai. S. II. 2. 2. 7 seems to have been understood by Āp. Dh. S. II. 6. 14. 1 and Baud. Dh. S. II. 2. 2-5<sup>1187</sup> in this sense. Manu IX. 114 says that the eldest may get the best of all the items of wealth, whatever is the most eminent and the best of a group of ten cattle. Br. (S. B. E. 33 p. 371 verse 8) is to the same effect. Kauṭ. III. 6 points out that according to Uśanas among the sons born of the same mother, goats shall be the special share of the eldest among brāhmanas, horses among ksatriyas, cows among vaiśyas and sheep among śūdras, that if there be no quadrupeds the eldest was to take an additional share of one-tenth of the whole property excepting precious stones, since he releases his father from fetters (of Hell) by offering śrāddha. Kauṭ. himself holds that the eldest should get the vehicle and ornaments of his father (after the latter's death); the middle-most his bed, seat and the bronze plate from which the father took his meals; and the youngest should get black grain (like sesame),

1186. Compare the Vedic passages about the three debts owed to gods, ancestors and sages quoted in II. of Dh. vol. II. pp. 570 (v. 621), 425 (n. 1008), 560 (n. 1102).

1187. मनुः पुत्रेभ्यो दापे स्वभयमिति श्रुतिः । समस्तः सर्वेषामपिशेषात् । वरं वा अथ-  
यद्धरेज्यपेक्षः । तस्मादपेक्षं पुत्रं भजेन निरवसाधयन्तीति श्रुतिः । की. घ. सू. II. 2. 2-3. निर-  
साधयन्ति is explained as तौषण्यनि by शुनित्वा. II. p. 260 and आप. also  
(II. 6. 14. 1) employs the words एकदलेन उपेक्षं तौषण्यनि (having satisfied the  
eldest by giving him an excellent article of wealth). नि. १. p. 467 explains  
उपेक्षं पुत्रं धनेनाह्वरणलक्षणेन निरवसाधयन्ति इतरपुत्रेभ्यः वृषकं कुर्मन्ति.

iron, domestic utensils and the bullock cart. Hārita<sup>1188</sup> says: "at a partition the eldest should get a bull, the most precious wealth, the images for worship and the ancestral house, the other brothers should go out and build new houses or if there be a single house the eldest should get the southern (or best) portion". This special allotment to the eldest is called *uddhāra* (lit. what is first taken out) in Manu IX. 115-116 and Vāyu Dh. S. 18. 37, and Baud. employs the form "uddharet". There were other methods also prescribed for special distribution of wealth. Gaut. 28. 5 says that the eldest should get one-twentieth of the whole as a special share, a bull and a cow, a cow, a chariot to which horses, asses or mules are yoked and a bull. Manu IX. 112 provides that the special share of the eldest was one-twentieth of the whole property and whatever was the most valuable out of the ancestral property, the middlemost son should get half of this (i. e. one-fortieth part) and the youngest one-fourth of this (one-eightieth of the whole). Manu IX. 117 states that when no valuable items are taken out for the eldest the latter should get two shares, the son next to him one share and a half and the other sons one share each. Vas. 17. 42, Nār. (dāyabhāga 13), Br. (S. B. E. vol. 33 p. 371 verse 9) also give two shares to the eldest, the latter<sup>1189</sup> making it to depend on the possession of learning and good qualities by the eldest. Similarly Nār. (dāyabhāga 12), Br. (S. B. E. vol. 33 p. 370 verse 5) provide<sup>1190</sup> that when the father makes a division during his lifetime he may retain two shares for himself. Śaṅkha-Likhita allowed this right to the father only when he had an only son.<sup>1191</sup>

1188. विभक्तिस्पर्माणे वर्षा समूहे दुषभमेकधनं वरितं वा स्वेष्टाव द्रुपदेवता एते च एतेरे निष्कस्य कुर्षुः । एवमित्येव दक्षिणं स्वेष्टावानुपूर्वमितिरेषाम् । इति वा. q. by वि. र. p. 421. Vide Damodardas v. Uttamram 17 Bom. 271, 288, for the eldest son being given the custody of the family idol and the property appertaining to it.

1189. जगन्विद्यामुपलब्धेऽं श्वश्रे वापदुष्यमुच्यते । समस्तभूमिस्तन्वे तेषां विदुः समस्तु सः ॥ बृह. q. by वापभाग II. 42 p. 42. वि. र. p. 460. स्मृतिच. II. p. 266; परा. ना. III. p. 460. चवह्वारसार quotes first half as वापभाग (p. 218).

1190. वीरजिभावे तु पिता दृढलिङ्गद्वये स्वयम् । बृह. q. by वापभाग II. 35 p. 36, स्मृतिच. II. p. 261. चव. वि. p. 414. चव. न. p. 444, वि. र. p. 463.

1191. स एवेकद्रुपः स्पर्श द्वौ भागवातमगः कुर्षाव । दृढलिङ्गित q. by वि. र. pp. 465, वापभाग II. 39 pp. 47-48, अपराक. p. 717. (attributes to दृढ.). The वापभाग does not take the word एकद्रुप as a बहुव्रीहि but explains it as meaning एकस्य द्रुपः (i. e. ओस and not श्वश्रु), while स्मृतिच. explains it as दृढित्ववत्क. वि. र. p. 466 says "पारिजातस्तु एकद्रुपः एवेकद्रुप इत्यर्थः । भाग्यकारस्तु दुषसम्भूत एवेकद्रुपः । एवेकाकी एवेदिति पठित्वाच । एवेकाकी पानीविरहितोपि स्वासदाय्यं दृढवै दृढीयात् । सपारिकीर्णैस्तमपपरैर्यामेन ओषसेत् ।": The भाग्यकार seems to be that of the दृढलिङ्गितद्रुप. The मदनमरान (folio 91 b) refers to पारिजात's explanation (एक-शब्दोऽन्वेषकाची). The चव. न. p. 444 criticizes वापभाग.



In course of time there was a revulsion of popular feeling against allowing a special share to the eldest son and even to the father. Kat. (838)<sup>1192</sup> states that where the parents and brothers divide the whole joint property in equal shares that is a just (or legal) division. Br. (S. B. E. 33<sup>1193</sup> p. 370 verse 2) declares that the father and sons are entitled to equal shares in lands and houses that are ancestral, but in property acquired by the father the sons cannot claim a share against the will of the father. The V. M. (p. 95) remarks on this that it follows impliedly that in the wealth acquired by the grand-father or other (remoter) ancestor, the sons can demand a partition even against the father's desire.

According to Manu IX. 125,<sup>1194</sup> If all wives of a person are of the same caste, then the son who is born first (even from a wife who is junior i. e. married later) is the eldest son and that among twins the one that is born first is the eldest (verse 126), just as in the Subrahmanyā<sup>1195</sup> texts the invocation of Indra is made by the name of the first-born. But if he has wives of different castes then the son of the wife of his own caste is the eldest (though born later) and the son of a wife of a lower caste though born first would be postponed. Devala<sup>1196</sup> quoted in V. R. p. 477 and V. Q. p. 128 says the

1192. सकलं द्रव्यजाते पदार्थेषु हन्ति तत्तमैः । पितरौ ज्ञातरथैव विभागो धर्मः  
इत्येवं ॥ कात्या. 838 q. by मनुवि. II. p. 200, मदनमल (folio 91 b), च. मयूख  
p. 98, च. घ. p. 448 which last remarks 'मदनमलपुस्तकाद्यप्यन्यत्रानामु सर्वेषां  
धनुषां पितादृशाणां च समं दायदणैश्च सुखमिति स्वीकृतं । ... अत एव योगीश्वरोपि सर्वे  
वा तस्य समं दितः इति सर्वथा नापुङ्गवः । अथवा समं दितो वा कुर्वति सुखमिति वदेत् ।'

1193. कस्यपि सुपतेरे पितादृशः समं दितः । पौत्रे न विभागार्हाः पुत्राः पितर-  
निच्छन् ॥ वृह. q. by च. मयूख p. 92 which adds 'अपत्नितानामहात्मनो हन्मिच्छ-  
न्पि विभागार्हा इत्यर्थः ।'

1194. सप्तसखीषु जातानां दुराणमभिधीयतः । न मातुलो ज्यैष्ठ्यमस्ति जन्मतो पौत्रस्य  
मत्त ॥ मनु. IX. 125; the वि. वि. p. 125 after quoting this verse remarks 'तेन  
नानाजातसु भार्यासु पतिसंभवाजो पञ्चाजातो ज्येष्ठ इत्यर्थः' and निरुपस्थित्यु III. पूर्वांशे  
p. 251 says 'तेन कमिडायां पूर्वजात एव ज्येष्ठो न ज्येष्ठार्यो पञ्चाजात इत्यर्थः'.

1195. For Subrahmanyā invocation, vide H. of Dh. vol. II pp. 144-45  
and note 2350 as to how the names of descendants by the seniority of birth  
are included in that invocation.

1195a. बहिर्वर्जेषु ज्ञातरिषाद्यस्योः पूर्वजन्मतः । परम जातस्य यमयोः पश्यन्ति त्वत्त  
सुखम् । सम्पत्तः पितरथैव तस्मिन् ज्यैष्ठ्यं यमिदितम् । देवल q. by वि. र. 477, वि. वि.  
p. 128, निरुपस्थित्यु III. पूर्वांशे p. 251. The वैजयन्ती on निरुपस्थित्यु 15. 37 correctly  
points out that the word इति तदा भगवो यमो ह्येतद्विचरितवान् are quoted by  
Srikhara (in his comment on the आनन्त).

same as Manu IX. 125. Manu IX. 123 and Gaut. 23. 16 appear to conflict with Manu IX. 125 and probably refer to some other ancient text or opinion. The V. Mayūkha (pp. 97-98) notes that in some medical works and in the (commentary on the) Bhāgavata Purāṇa III. 17. 18, it is said that among twins the one born later is deemed to be the elder, but that this, being opposed to the indications contained in the Vedic Subrahmaṇya formula and in Manu IX. 126, has no bearing here (but only in medical matters). The Nirṇayasindhu (III Pūrvārtha p. 251) makes a reference to the Bhāgavata.

General feeling went so much against allowing a special share to the eldest or allowing the father to make an unequal division among his sons, that such action was condemned in the same breath with *niyoga*,<sup>1196</sup> or the sacrifice of the cow called Anubandhyā. It is very instructive to follow the arguments of the Mit. and other writers on this point. The oldest extant commentator, Medhātithi, on Manu IX. 112 shows that even before his time there were writers that held that the texts of Manu on *niyoga* and on the special share to the eldest at a partition were in vogue only in bygone days and not in their days, that the rules of the smritis were conditioned by time and country, just as *sūtras* of long duration, though declared in the Vedic texts committed to memory by Vedic students, were not being performed and just as Manu (I. 85) declares that the dharmas were different in different *yugas*. But Medhātithi<sup>1197</sup> does not accept this reasoning, denies that different dharmas are prescribed for different *yugas* and holds that there is no restriction as to the dharmas to be performed in a country. Though *sūtras* may not be performed now still it is possible to perform them. The argument of the Mit. on Yāj.

1196. For *niyoga* vide H. of Dh. vol. II pp. 599-607. The anubandhyā (or anubandhyā, a barren cow) was sacrificed after the *Udayaniyā* *yaj* performed at the end of the Agnishtoma. Even in the times of the *sūtras* (such as Āp. Śrauta XIII. 24. 10 and Kāt. Śrauta X. 9. 14-15) *amīkṣā* (curds mixed in heated milk) was optionally offered. Vide. H. of Dh. vol. II. pp. 1200-1201.

1197. इदमुद्गायनीयोगसूत्रिदलिकान्तकालविदवा न लभते । अमुदेवे नियुक्ताह-  
ण्यस्तुतीयमिति किञ्चिद् । ... तस्मादुद्गायनीयोगोपसङ्गत उपदिष्टा नावुदेयाः । तदे-  
तद्विज्ञातम् । मेधातिथि on मनु IX. 112.



II. 117 is briefly as follows<sup>1198</sup> :—Unequal division though found in the śāstras ( e.g. Manu IX. 105, 112, 116, 117, Yaj. II. 114 ) should not be practised because it has come to be condemned ( or has become hateful to ) by the people, since there is the prohibition ( in Yaj. I. 156 ) that an action, though prescribed in the śāstras, should not be performed when it has come to be condemned by the people, since such an action does not lead to the attainment of Heaven. For example, though Yaj. I. 109 prescribes the offering of a big ox or a goat to a learned brāhmaṇa guest, it is not now practised because people have come to hate it; or just as, although there is a Vedic text laying down the sacrificing of a cow " one should sacrifice a barren cow called anubandhyā for Mitra and Varuṇa ", still it is not done because people condemn it. And it has been said " just as the practice of *mṛga* or the killing of the anubandhyā cow is not now in vogue, so also division after giving a special share ( to the eldest son ) does not now exist ". Āpastamba also ( II. 6. 14. 1-14 ) prescribes equal division, refers to the view of some that the eldest takes the whole estate, shows that allotting a special share to the eldest is the view of some and refutes it as opposed to the śāstras by quoting the Vedic text " Manu divided his wealth among his sons ". Therefore unequal division though found in the śāstra should not be practised as it is opposed to popular sentiments and to the Veda and so Yaj. ( II. 117 ) gives the restrictive rule that in partitioning there must be equal division. The Sm. C. ( II. p. 266 ) tells us that Dharmśvara also did not discuss passages like Manu IX. 112 since he said that the practice ( of *uddhāravibhāga* ) had been altogether given up by the people<sup>1199</sup>.

1198. अथ विधमो विभागः शास्त्रदृष्टत्यापि लोकविद्विष्यामावुडेयः । अथर्वो लोक-  
विद्विष्यं धर्ममन्याचरेण तु-इति निवेधात् । यथा-महोक्षं वा महाजं वा ओजिषायां कल्पयेत्-  
इति विधानेपि लोकविद्विष्यादनुवृत्तानम् । यथा वा-मैत्रावर्क्यो यो यशमनुवर्षयामासते-  
इति यज्ञसम्पन्नविधानेपि लोकविद्विष्यादनुवृत्तानम् । उक्ते च-यथा नियोगधर्मो यो मानु-  
ष्यदेवयोपि वा । उपोद्धारविभागोऽपि नैव संभति कर्तव्य इ-इति । ... तस्माद्विधमो विभागः  
शस्त्रिदृष्टोपि लोकविरोधाद्भुतिविरोधाच्च आवुडेय इति सममेव विमतेरस्ति निवृत्तते । निवा.  
on या. II. 117. The verse यथा नियोगः is attributed to the स्मृतिसंग्रह by the  
मदनमल ( folio 92a ) and व. न. p. 443 and to the संग्रह by स्मृतिच. II. p. 266  
which reads ' धर्मोद ' and explains अथसंजनिद्वयोः कतिपुत्रमभिसंघातको. The  
व. न. p. 414 ascribes it to यज्ञपति, the व. न. III. 492, यज्ञहारासार p. 219,  
and others attribute it to संग्रहकार.

1199. एतदेव धर्मभरणीकम् । उदेदस्य विंश उपहार इत्येवमादीनि वाक्यानि न विचा-  
रन्ते लोकैकान्यन्यपरिचयकतत्त्वात् । कदापि नोप । द्वापरयुगावुडेयतेत्याद्यन्यपरिचयानाम्, वाह ।  
स्मृतिच. II. p. 266.

The Sm. C. finds fault with Viśvarūpa for saying that just as the offering of an ox or a goat to a learned brāhmaṇa is not practised because the practice of the śiṣṭas is against it, so *uddhāra* is not practised. It says that when there is a conflict between a *smṛti* text and *śiṣṭācāra*, the latter is the weaker (of the two) and cannot refute the *smṛti* text as laid down by Vas. I. 4-5. Further not offering a bull cannot be said to be *śiṣṭācāra*, but it is really the absence of *śiṣṭācāra*. The Sm. C. finds fault with the Mīt. for saying that people have come to condemn a special share for the eldest. It says that, on the contrary, if a special share is given to the eldest who is endowed with learning, good qualities or holy actions then people commend such a procedure. The *Madamratna*<sup>1200</sup> quotes the verse "yathā nīyoga &c.," and a verse from the *Ādipurāṇa*. The V. P.<sup>1201</sup> (pp. 442-443) generally follows the Mīt., but criticizes it by saying that there is no real *śruti-virodha* (opposition to a Vedic text). If that were so, as *śruti* (the Veda) is promulgated for all ages, unequal division would be forbidden in all ages and it would follow that the particular *śruti* passages speaking of

1200. एवमादीनि विषयविभागविषयानि मन्त्रादिग्रन्थानि कतिपयव्यतिरेक-विषयाणि । अत एव कलौ विषयविभागनिषेध आदिपुराणे । उदाधाः दुमकदाहं ज्येष्ठोऽं वाचये तथा । कलौ एव न कुर्यात् प्रातुजायां कमन्वतुम् ॥ ज्येष्ठोऽं जन्मविद्यादिद्वयैकैक्यनिबन्धन-मंदाहः । स्मृतिर्लोकप्रसिद्धेति । यथा नियोगधर्मो ... संयति वर्तते ॥ इति । संयति कलियुगे । मदनराम (folio 92 a). The verse उदाधाः is quoted in the Sm. C. (II. p. 266) also from a *पुराण* (without naming it). Rao Bahadur Rangaiah Aiyangar (in Introduction to V. Nir. XLIX-LI) wrongly thinks that by *स्मृतिर्लोकप्रसिद्ध* is meant the *व्यव. नि.* of *वरद्वाराज* which quotes the verse यथा नियोगधर्मो नो from *प्रजापति*. He failed to note that the verse यथा नियोगधर्मो नो &c. is quoted by the Mīt. on Yāj. II. 117, the *Mitākara* being one of the authorities quoted in the V. Nir. Therefore the *स्मृतिर्लोकप्रसिद्ध* from which the verse is said to have been taken is the work of that name also called *संग्रह*.

1201. अस्वर्गं लोकविहितं धर्म्यत्वाच्चेष्टम् । इति पोमीश्वरचनान् । अथ लोक-पदेन दुमकुर्यते । पुनान्तरे धर्म्यमपि पुनान्तरे बहिर्विहितं प्रविष्टिद्वे तत्ताच्चेष्टित्यर्थः । अथवा धर्म्यत्वात्स्वर्गलोकपूर्वाभावात् । शास्त्रविहितं तदभिज्ञविहितं वाचित एव । तदभिज्ञत्वामरज-विहितस्तु नास्वर्गत्वापादकं । इति पोमीश्वरचनान् । तदभिज्ञत्वादिद्वयैकैक्यनिबन्धन-मंदाहः । इति । संयति कलियुगे । मदनराम (folio 92 a). It should be noted that *निष्कुर्य* reads the verse of Yāj. as अस्वर्गं लोकविहितं and takes *अस्वर्ग* as (अ + कुर + अत past p. participle of कृ) 'अस्वर्गम्, अमुनाम् । अमुपरिनिश्चितमित्यर्थः'. He then notices another reading *अस्वर्गं* which means *अशोभनत्वम्* (not bringing about welfare in the end). He further explains 'लोकं कर्मसाधने ये जायन्ति ते लोकविदो मन्वादयः वैद्विषं नाचरेत्'.



unequal division are without authority, since it (unequal division) could not have been practised in other ages also (but as a matter of fact it was); besides Baud. sets out another Vedic text which mentions unequal division. The V. P. desiring to guard against the rather wide statement that whatever is condemned by the people should not be practised holds that the word "loka" in Yāj. I. 156 means "yuga"; otherwise there would be confusion about what is proper conduct and what does not lead to Heaven. The condemnation by low or ordinary people who are quite innocent of śāstras cannot make an action incapable of leading to Heaven, since such people might condemn the *himsā* (slaughter) of the animal offered to Agni and Soma. The above discussion illustrates how practices once recognized by Vedic passages and by the people gradually fell into disuse and how reason and the common sense of ordinary people asserted themselves even against Vedic and smṛti texts. The Mī. is very clear in its statement that whatever comes to be hated by the people in general should not be practised, even though it was once practised and has the support and authority of Vedic and smṛti texts behind it. Those who desire change in social customs and the practices of the people in various directions rely on this text of Yāj. and on similar texts<sup>1202</sup> of Manu IV. 176 and Viṣṇu Dh. S. 71. 85 and on the Mī. for authority. Orthodox writers like Mitrāmīśra therefore have to twist plain words like "loka", since they cannot tolerate the idea that common people can have anything to say in what these writers believe to be the injunctions of the śāstra. Instead of candidly saying that ancient practices came to be modified by common people, writers like Mitrāmīśra say that common people should not be listened to in these matters, that each *yuga* has its own peculiar practices and that common people have no authority to change śāstric practices prescribed by the texts for a particular age. It is sheer quibbling to say that not offering a bull is not *āṣṭācāra*, but absence of *āṣṭācāra*; what is clear is that common people abhorred the practice of *niyoga* and the killing of a cow in a sacrifice and writers of sūtras and smṛtis fell into line with them and prohibited such practices in the

1202. परिचयविद्वत्कामौ चैव राज्ञीर्जनैर्विद्वी । यन् चान्यपुण्योर्द्वे लोकनिबुद्धेभ्यः  
च ॥ मनु. IV. 176; परमिहविद्वी चार्थकामौ । लोकनिबुद्धे च भर्गमपि (परिचयेत्) । विद्वत्परम-  
बुद्ध 71. 83-85; जनयोर्वै नति दुदकारं न कुप्यात् । बार्हस्पत्य-अर्थशास्त्र I. 93.

Kali age, though they were either permitted or (even) enjoined by the Vedic texts; that is, the voice of the common man or his revolt was allowed to prevail over the word of the sacred Veda.

Though the assignment of a larger share to the eldest son or giving him the whole property ceased to be generally prevalent, vestiges of it are still found. There are certain estates in the nature of *condominies* or a *rāj* that are impartible and descend by the rule of primogeniture to a single heir. Vide *Baboo Gunesch Datta v. Maharaja Moheshar* 6 Moo. 1 A. 164, *Neelkanto v. Beer Ghunder* 12 Moo. 1 A. 523, *Mohesh v. Satrugnan* 29 I. A. 62, *Ram Nandan v. Maharani Janka* 29 I. A. 178 for examples of impartible estates. Sometimes by custom certain estates such as *Deshmukh* and *Deshpande taluqs* have been held to be impartible. Vide *Ramrao v. Yeshwantrao* 10 Bom. 327 and *Gopalrao v. Trimbakrao* 10 Bom. 598. In certain other cases a larger share (called *jyesthāhā* or *naṣap*) has been allowed by custom to the eldest son at a partition. Vide *Mamkchand v. Hirala* 20 Cal. 45 (P. C.), *Prithisingji v. Umedsingji* 6 Bom. L. R. 98, *Malubhai v. Sursingji* 7 Bom. L. R. 831.

The following propositions may be laid down about the allotment of shares on a partition: (1) When there is a partition between a father and his sons each son takes a share equal to that of the father; (2) where the partition is only between brothers all of them share equally; (3) on the death of a member leaving male issue his right to a share on partition passes to and is represented by his male issue; (4) when there is a partition among members who are uncles and nephews or cousins, the allotment is *per stirpes* (according to the stock) as regards each branch and *per capita* among the members of the same branch. This rule is expressly laid down<sup>1201</sup> by Kaṇva-

1201. अद्विष्टा वधोपि च अरण्ये जलपुत्राश्च पितुर्कर्मज्ञं हरेत् । संदर्शनामेक-  
पितृकाणां पितुर्गो दायविभागः । अर्धभागः 111, 2 : अनेकपितृकाणां तु पितुर्गो मातृकल्पना ।  
पा. II. 120. This is read as प्रसीदपितृकाणां in the स्मृतिच. II p. 278, स्प. न. p. 449  
and a few other digesta. Vide n. 1058. जनकेत्यु वत्सार्थं सर्वे तत्र समंशिनः । तादृजा  
विषमसम्पाः पितृभाणदराः स्मृत्या न हृद्. q. by अपरार्क p. 727, स्मृतिच. II. p. 278,  
स्प. न. प. 424, नि. र. pp. 481-82; अतिमकोऽनुजे येन तत्पुत्रे विषयभाषितम् । कुर्वन् जीवनं  
तेन लभ्यं तेन विनाशनाम् । लभेतांशं स पितर्यं तु पितृप्राप्त्यय वा मुनाम् । स एवांशस्तु सर्वनां  
आत्मा ग्राह्यते भवेत् । लभेन तादृशो वापि विहृतिः पश्यो भवेत् ॥ कात्या. q. by अपरार्क  
p. 727, स्मृतिच. II. p. 278, नि. र. p. 482, स्प. न. p. 449. These verses are



III. 5., Yāj. II. 120, Bṛ. (S. B. E. 33 p. 372 v. 14) and Kāt. (855-56). This last rule requires to be explained and illustrated. Yāj. II. 120 concisely states: "in the case of those who claim through different fathers, the assignment of shares is according to the fathers". Kāt. says: "if an undivided younger brother dies, he (the elder brother or the other brother) should make the son of the former a partaker of the ancestral wealth, when he has not obtained from his grandfather livelihood (i. e. share of heritage); he should obtain from his paternal uncle or the uncle's son the share which his father would have got (if alive); that very share would be the share according to law of all the brothers (who are the sons of the deceased brother). Or even a son (of that son of the brother dying) would obtain that share; beyond this (i. e. beyond the grandson of the deceased brother) there is cessation (of the right to demand a share)". It was stated that in the ancestral property (*śulūkāya dravya*) sons and grandsons equally have rights by birth, but in the case of the grandsons assignment of shares is made to them through their

(Continued from the last page)

legally explained in *Moro v. Ganesh* 10 Bom. H. C. R. 444 (at pp. 461, 466-67) and are quoted in *Debi Parashad v. Thakur Dyal* 1 All. 103 (F. B.) at p. 111. On these verses of कात्यायन the *व्य. मयूख* (p. 101) says that they do not refer to undivided coparceners, but rather to those who are re-united. Why it says so is not clear. The first verse of Kāt. starts with the words अविभक्तकुले and therefore the topic is that of undivided family and there is no express indication that it has changed to reunion in the following verse. The reason appears to be that नीलकण्ठ takes the verse of देवल 'अविभक्तविभक्तानो कुलपानां वसतो सह । पृथो दापयिष्यामः रवादाचतुर्धादिति स्थितिः' as referring to re-union on account of the word *पृथो* in it. The words आचतुर्धात् (in देवल) and स्थितिः परतो भवेत् (in कात्यायन) mean the same thing and so नीलकण्ठ probably thought that they referred to the same subject. The interpretation of देवल (by नील) is forced and is opposed to the explanation of most works like the विशद्वल्गाकर (p. 482) and *व्य. म.* p. 449, *समुच्च.* II. p. 279. They take अविभक्तविभक्तानां as a *śvaṇḍa* compound meaning 'those who are undivided' and 'those who are divided', while नील takes that word to mean 'those who being once undivided are divided' (i. e. as a *कर्मधारय*). सह वसतो—acc. to the other digest means either 'who dwell together' (in the case of the undivided) and 'who reunite' (in the case of the divided). 'अविभक्तानामेव वा विभक्तानां सह वसतो संघटनानां वा पुनर्विभागो धातुतत्प्राप्ततत्प्राप्तपर्यन्तमेव तत्प्राप्तपञ्चतुर्धाभिवर्तते इति' वि. २. p. 482; नीतिचतुर्धमिष्यात् दापयाम इत्यर्थः । विभक्तानामपि सप्तर्षादिना सहवासो मति इयं व्यवस्था । वसतो सहेति वक्ष्यामः । *व्य. म.* p. 449. Vide *Moro v. Ganesh* 10 Bom. H. C. R. p. 444 at pp. 463-468 for several objections to the explanation of Devala's verse offered by Nīlakaṇṭha.

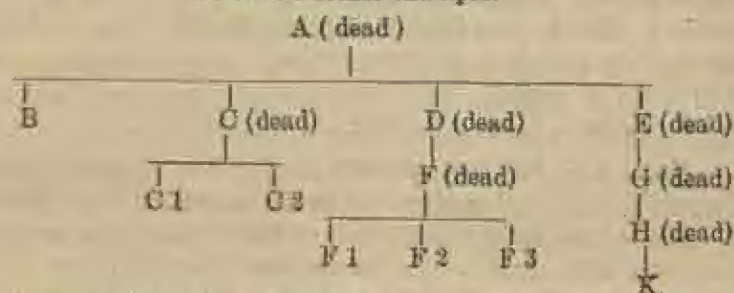
fathers and not in their separate individual capacity. This may be illustrated by some examples.



Suppose A, B, C, D, E, F, G, H, J, K formed a joint family and that A, B, C, D all die without making a partition, B leaving one son E, C

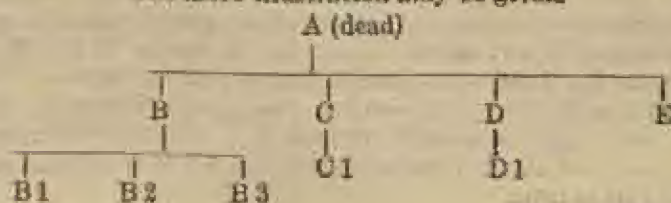
leaving two sons F, G, and D dying leaving three sons H, J, K. If E, F, G, H, J, K want to partition, then these six will not take one-sixth each, but the partition will be through their fathers i. e. E the only son of B will take one-third, F and G (the two sons of C) will take one-third (i. e. each will take one-sixth) and H, J, K will together take one-third (i. e. one-ninth each). The same will be the result if only A, B, C die, leaving D to K. Here D, the uncle of E, F, G, along with his three sons H, J, K will take one-third only.

To take another example.



Suppose A the head of this joint family dies leaving a son B, two grandsons C1 and C2, three great-grandsons F1, F2, F3, and one great-great-grandson K. Here K cannot demand a share, as he is beyond 4th from A the common ancestor A that died last. Therefore the joint property will be divided *per stirpes* into three parts, B taking one-third, C1 and C2 together taking one-third and F1, F2, F3 together taking one-third.

One more illustration may be given.





Suppose A, the head of a Hindu joint family, dies leaving four sons, B, C, D, E and five grand-sons, B 1, B 2, B 3, C 1, D 1 and then B dies. Then B 3 receives his share, which is one-third of one-fourth (= one-twelfth), goes out of the family and the rest continue joint. Then C dies, then D, then E, and then B 2. Then B 1 sues C 1 and D 1 for his share. Here if we again apply the rule of *per stirpes* division, the property that remained at the date of the suit of B 1 will be divided into three parts and B 1, C 1 and D 1 (who represent three stocks, B, C, D) will each get one third of that property. This was so decided in *Pranjivandas v. Ichharam* 39 Bom. 734. The Madras High Court, however, holds that the rule of *per stirpes* applies only when all the coparceners desire a partition at the same time and that if only some members separate at one time and others on a later occasion, regard should be had to the share allotted at the first partition in computing the share to be allotted at the second partition. That is, according to the Madras High Court in the above case B 1 will be entitled to one-third minus one-twelfth (which latter was allotted to B 3 when he left the family). The Madras High Court says that its views are based not on strict principles of Hindu Law, but on necessary considerations of equity. Vide *Manjanatha v. Narayana* 5 Mad. 362 and *Narayana v. Shankar* 53 Mad. 1 (F.B. at p. 6).

Manu (IX. 47) emphatically states:<sup>1203a</sup> "once is a partition made, once is a maiden given in marriage, once does a man say 'I shall make a gift of this or that'; these three are done only once by the good". This means that a partition once made is final and cannot ordinarily be reopened. But there are exceptions to this rule. One viz. about the posthumous son born after partition has already been mentioned above (pp. 595-597). Br.<sup>1204</sup> (S. B. E. 33 pp. 373-74 verses 24-26) says, "If a man

1203a. सङ्कुटुम्बो निपतति सङ्कुलकया पदीयते । सङ्कुटुम्बं कुटुम्बीति वीर्येतामि नतां सङ्कुटुम्बं ॥ मनु IX. 47 which is the same as नारद (श्रीधुसलोच 28) and वसुदेव 294, 26.

1204. गोत्रसाधारणं त्वक्त्वा योग्यदेशे समाहितः । तद्वैश्यपरमपरवर्णः वदात्तयो न संशयः ॥ तुलीयः पञ्चमथैव सप्तमो वापि यो भवेत् । कर्मकामपरिज्ञाने लभेत्तच्छो कमायवत् ॥ यं परमपरमो नीलः सामन्ताः स्वामिनं विदुः । तद्वैश्यपरमपरवत् वदात्तयो गोत्रजैर्मही ॥ बृह. q. by द्वापभाग VIII. 2-3, स्मृतिसू. II. pp. 307-308, द्वापत्तर p. 180, वि. र. pp. 540-541. The वि. चि. p. 132 seems to ascribe these to कात्यायन. For नीलः vide वे त्वं पूर्वं सामन्ताः पञ्चद्विजालं नीलः । तन्मूलपात्रु ते नीलं जातिभिः संवर्णयिताः ॥ कात्या. q. by सिङ्ग. on वा. II. 151, अपराधं p. 760. Kāt. derives नील from मूल and states that they were once neighbours but later migrated and hence they are so called.

leaving the country common to himself and his co-sharers goes to another country, his share must undoubtedly be given to his descendant when the latter comes back to the original country. Whether he (the descendant) be the third or fifth or even seventh in descent (from the man who left the country) he would get the share that descends hereditarily provided his birth and family name are ascertained. The *gotrajas* (agnatic members of the family) should allow (a share in the ancestral) lands to the descendant of a man whom the *manus* and neighbours know to be a co-owner (in the lands) by descent, when he comes (after a partition) to demand his share". The V. R. explains<sup>1205</sup> that the rule of Devala (given above) about a claim to a share being allowed up to the fourth applies when all the members stay together in the same place or country, while the above rule of Br. allowing even the seventh in descent to claim his share after a partition has taken place applies where such descendant and his forefathers had migrated to a distant land. These rules of Br. indicate that, even after a long time, a descendant could claim his share in a joint family estate and no bar of limitation was allowed.

Another rule is that where some property of the joint family had been fraudulently concealed by one member and was discovered afterwards, or where some property was left out from partition either through mistake or accident, such property should be divided according to their shares among the persons who made the first partition. In this case there is no reopening of the partition once made, but there is another partition. Manu IX. 218, Yaj. II. 136, Kaut. III. 5 and Kāt. 885-86 lay down<sup>1206</sup> this. Kāt. says: 'If (joint) wealth was concealed, but

1205. परमा चतुर्धावृत्तिभक्तविभक्तानामिवादिदेवलोक्तमिदम् न सहपासादी । अथ  
च दुरदुर्गमसाक्षात्परिविधेयः । वि. र. p. 541. The स्मृतिच. II. p. 308 states that  
the last verse applies only to lands (i. e. a partition can be reopened only  
as to immovable property). तदुक्तं चिरधोषितपर्यन्तं समन्ताद्वापिभिर्नोत्तरान्ना-  
पयपूर्वकं भागवत्त्वं कार्यम् । द्वापभाग VIII. 4. Compare Art. 127 of the Indian  
Limitation Act.

1206. दुर्विभक्तमन्वेषणापहतमन्तर्हितमविज्ञातोत्पन्नं वा पुनर्विभजेत् । अर्थसाध  
III. 5; मन्त्रादितं यदि धर्मं पुनरासाद्य तत्समम् । भजेत्तु प्रायुषिः सार्धं समाने हि विदः सुताः ॥  
अन्वेषणापहतं दत्तं दुर्विभक्तं च यद्वदेत् । यथाधानं विभज्येत समभागेन तद्वत्तुः ॥ कारवा.  
885-886 q. by अपराधे pp. 732-733 (which reads last half as तुने नष्टं च यद्वत्तुं  
यावत्तं च पुनर्विभजेत्), स्मृतिच. II. pp. 308-309, द्वापभाग XIII 4. p. 221, वि. र.  
526. विभजेत्तुमिति वदता येन दृश्यते तेनैव न द्वापमिति वक्षितम् । मिता. ०० वा II. 125 ;  
तुने नष्टं यत्तु विभक्तकल्पना कृता तत्सममैव कार्या न पुनरपहर्षणपूर्वकं अन्वेषणा  
दातव्यं न दातव्यं वा नेति समता नयेदित्यस्यार्थः । द्वापभाग XIII. 2.



is afterwards discovered, the sons should divide it equally with their brothers in the absence of the father (i. e. even after his death). Whatever is concealed from each other (by the co-sharers) or what was divided in an unjust manner and whatever was recovered (such as debts) after (partition) should be partitioned in equal shares. This is the view of Bhṛgu.

In the Ail. Br. (VI. 7)<sup>1207</sup> it is said: 'He who deprives a person entitled to a share of his share, him he (who is deprived) punishes (or destroys). If he does not punish (or destroy) him (the depriver), then he punishes his son or grandson; but he does punish him'. Manu IX. 213 declares that even the eldest brother who through greed deprives his younger brothers (of their shares) ceases to be the eldest (i. e. forfeits his position as the eldest), is deprived of his (special) share (as eldest) and should be punished by the king. From these passages it follows that fraudulently concealing joint property or depriving a person of his share is condemned. This leads on to a divergence of views among commentators and digests. If a man conceals joint property at a partition, is he a wrongdoer or not? What he conceals is partly his own. Therefore the *Dāyabhāga*<sup>1208</sup> (XIII. 8) holds that there is no theft in this case, since a thief is commonly understood to be one who knowing that some thing belongs to another, makes it his own without any ground for so doing; while a co-sharer cannot be said to be no owner at all of the joint property. The *Dāyabhāga* (XIII. 11-12) says that Viśvarūpa and Jitendriya both held the same opinion that even if technically it may be called theft, still there is no sin attaching to it as smṛtis allow him also who conceals joint property to share in it at the subsequent partition. The *Vivādaratnākara* (p. 526) states that Haṭhyudha also held the opinion that in suppressing some joint property the co-sharer did not incur the sin of theft. On the other hand the *Mit.*, *Aparārka* (p. 732), V. P. p. 555 hold that in view of Manu IX. 213

1207. सो वै मातुर्न मायाश्रद्धो चयते तेन न यदि तेन न चयतेऽयं पुत्रस्य वीर्यं चयते स्वेवमिति । हे. मा. VI. ७. This is cited as मातुर्न in the *Viṭa.* on *ṛa.* II. 126. In the *ṛa.* m. p. 131. The *ṛa.* m. III. p. 306, *sa. vi.* p. 438, *ṛa. ch.* 335 correctly refer to it as *सुनि*.

1208. तदुक्तं विश्वकसेनापि । अमलकरद्वयो मातोति वचनारम्भनामधेयौ शोभ-  
यावर्धनियमोरेवमिदम् । ... सर्वपिता स्तेयः पतुर्गणे विभागाच्चनपुत्रोनाम शोचद्वयः ।  
अथवा सुवर्णादिनिहने पतिनस्य भारो न स्वस्य । द्वाभ्याम् XIII. 11 and 12  
pp. 224-225.

( which declares even the eldest as punishable by the king if he deprives his younger brothers of their due share ) and the Ait. Br. there is the fault of theft in case a co-sharer fraudulently conceals joint property. The Mît. and V. P. further rely upon an example derived from the Pûrvamīmāṃsā in support of their view. When a *caru* (boiled food) of *mudga* pulse is prescribed and *mudgas* are not available, some substitute must be employed just as when rice is not available *añdra* grain may be employed. The parts of *māsa* resemble those of *mudga*, and some one may plausibly say that in the absence of *mudgas*, a *caru* of *māsa*s may be used. To this Jai. VI. 3. 20<sup>1209</sup> replies that, since *mūṣas*, *varākas* and *kultrākas* are forbidden as being unfit for use in sacrifices, one cannot take parts of *māsa*s as substitute for parts of *mudgas* though both may be so similar as not to be easily distinguishable. So the general prohibition against depriving another of his wealth holds good even in the case of goods that belong jointly to oneself and to others. The *Dayabhāga* ( XIII 16 pp. 227-228 ) tells us that a predecessor of it named *Balaka* relied on this very *nyāya* of *Jahnu* and finds fault with him. It should be noted however that *Kāt.* ( 888 ) recommends that the king<sup>1210</sup> even if a complaint be lodged about fraudulent suppression by a co-sharer should not use force against the fraudulent suppressor but should make him give up the concealed property by persuasion or trick. Bt. and *Kāt.*<sup>1211</sup> declare that if there is a suspicion that some joint wealth has been concealed by a co-sharer, the *koda* ordeal may be resorted to.

1209. अविधिर्ज्ञाविशेषेण हि तत्पुनः । जै. VI. 3. 20 ; अथ वापविधिर्ज्ञाविधा वै वरकाः कीदृशः अवज्ञिषा वै नापा इति । किं तत्पुनस्तद्व्याप्यकारे प्रविधिप्रत्यक्षसु नैति । किं नापं पौर्वनिघेयमिति । ... एवं आते ब्रूयाः । अविधिर्ज्ञा च न प्रविधिप्रत्यक्षमिति । अविशेषेण होतृवृत्तते न वज्राहो नापा वरकाः कीदृशश्चेति । वज्रसम्बन्ध एवां प्रविधिकारधे । शबरः ; यथा भौद्धे चर्ये विषये सद्व्रततया माषेषु अवज्ञिषा वै नापा इति निषेधो न अविशति सुश्रावणवृत्तया सुश्रावणत्वादिति पूर्वप्रक्षिप्तोक्तं सुश्रावणेषु सुश्रावणेष्ववज्ञेनीयत्वा नापावचना अपि सुश्राव एवेति निषेधः अविशयेवेति सिद्धातिमोक्तम् । तस्माद्वचनतो न्यायतया साधारण-व्याप्यकारे दोषोक्तयेवेति सिद्धम् । मिता. on पा. II. 120.

1210. अङ्गनामहर्तृत्वे वज्राहो वजावपत् । कात्या. १. ४७ सुश्रावण XIII 7 ( p. 222 ). वाचस्पति p. 183, वि. र. p. 320, स्व. म. 336 which says ' राज्ञे तु भागिनिर्णये निवेदनीये राज्ञे निवेदितमपि तेषां सामादिनेषां वापनीयमिति योऽपिच्छेदादिदृष्टव्योऽन्यकमेव '.

1211. एतौपस्कृताद्याश्च दोषाभरणकर्तव्यः । दृश्यमाना विभक्त्यन्ते कोशे पुष्टोऽन्वी-द्वयः । कात्या. 842 q. by स्मृतिच. II. p. 273, वि. र. p. 498. The स्मृतिच. quotes a very similar verse of बृहस्पति ( on the same page ) viz. पुष्टोपस्कृताद्याश्च दोषाभरणकर्तव्यः । ... पुष्टे कोशे विधीयते ॥





a partition of joint family property, but it is *not conclusive*.<sup>1215</sup> Br. says that where there are no witnesses nor a document to prove partition, a conclusion may be arrived at by inference.

A few words may be said about the self-acquired property of the father or grand-father. According to the strict theory of the Mit. the son<sup>1216</sup> acquires by birth an interest even in the self-acquired property of the father, but the Mit. makes it clear that the son has no power to prevent his father from disposing of his own self-acquisitions, but has to give his approval to his father's alienations of his self-acquisitions. The Mit. sets out two smṛti texts viz. 'though immovable property and bipeds may have been acquired by the father himself, there can be no gift nor sale of them without (calling together or) consulting all the sons. Those that are born, those that are unborn and those that are in (their mother's) womb expect maintenance (and therefore) there can be no gift nor sale'. But these have been treated by the Mit. and the Dāyabhāga also as more or less recommendatory. If the father alienates his self-acquisitions without his son's consent he may be held guilty of transgressing a smṛti precept but the transaction does hold good and is valid,<sup>1217</sup> since a fact cannot be altered by even a hundred texts (as the Dāyabhāga puts it). It should not be supposed that the Mit. was the first to propound this right as to self-acquisitions. Centuries before, the Viṣṇu Dh. S. 17. 1 expressly declared that as regards self-acquired property the father has absolute discretion to divide it as he pleases.

1215. Vide *Ganesh Dutt v. Jewach L. R.* 31 L. A. 16 at p. 13. मातुसं स्थावरं न्यासः यामिनामथ विविधनाम् । अनुमानेन विज्ञेयं न स्थावरा पचमाक्षिणी \* बृह. व. by द्वापमान XIV. 8, p. 231, स्मृतिच. II. p. 310 (reads स्थावरस्वागम्यं), मय. म. p. 554.

1216. तस्मान्नेतृके पैतामहे च द्रव्ये जन्मनेन स्वत्वम् । ... स्थावरे तु स्वाक्षिते पित्रादि-  
भाते च पुत्रादिधारतन्त्रयेन । स्थावरं द्विषद् चैव यद्यपि स्वयमाक्षितम् । अस्मद्भूय ह्युत्पत्तयोर-  
न दाने न च विक्रयः ॥ ये ज्ञाता देव्यज्जाताश्च ये च सर्वे स्थावरिणः । वृत्तिं च नेभिराह्वयन्ति  
न दाने न च विक्रयः ॥ द्वापदिस्मरनाम् । मिता. ७७ वा. II. 114. The first is q. by  
the द्वापमान II. 29-30 (for which see note 1125). The first is ascribed to बृह.  
by मय. नि. p. 411.

1217. वैतुके पैतामहे च स्वागम्यं यद्यपि जन्मनेन तथापि वैतुके पितृपरतन्त्रत्वात् पितु-  
स्त्वात्कालेन ग्राह्यानाम् पिता विनिवृत्तमाने स्वाक्षिते द्रव्ये पुत्रेणाहुमतिः कर्तव्या । पैतामहे तु  
द्रव्योः स्वागम्यमपि ज्ञानमिति निवेदयत्कारोत्तीर्णति विशेषः । मिता. ७७ वा. II. 121.



Kāt. (839) also says that the son has no ownership in the father's self-acquisition.<sup>1219</sup> When Yāj. II. 114 allows the father either to give the best share to the eldest son or to make an equal division among all sons, the Mit. explains that this unequal division holds good only as to the self-acquisitions of the father. Similarly when Nar. (dayabhāga 12) or Śāṅkha-Likhita say that the father may take two shares for himself, that is with reference to self-acquisitions, acc. to the Mit. Manu IX. 104 stating that sons have no power over property during the life of the parents refers to the self-acquisitions of the parents. In modern times courts have followed the view that a Hindu father (or any Hindu person whatever) may give, sell or bequeath by will his self-acquired property (whether movable or immovable) to any body he likes (vide *Ran Balwant Singh v. Ran Kishori* 25 I. A. p. 54 at pp. 67-68 where the two verses cited by the Mit. were held to contain only a moral precept and not a rule of law capable of being enforced).

Mr. Kishori Lal Sarkar in his Tagore Law Lectures on the Mīmāṃsā rules of interpretation states (p. 21) that 'Mitākṣarā bears the impress of Buddhistic influence'. For this proposition he advances hardly any substantial evidence that will bear scrutiny. His reasons are mostly subjective and he refers to no ancient or medieval Buddhistic texts that elaborate the principle of taking property by birth or the rule of propinquity in deciding questions of inheritance, which two are the most fundamental tenets of the Mitākṣarā system. It appears that the evolution of the son's right to partition, of his equality with his father, of the absolute rights of a person to his self-acquisitions was a gradual indigenous growth and had nothing to do with Buddhistic thought. Buddhists had hardly any independent set of juristic ideas or works different from those of the Brahmanical jurists and in medieval times countries like Burma professing Buddhism turned to Brahmanic codes like that of Manu for regulating succession, inheritance and allied

<sup>1219</sup> वैतान्त्यं नमानं स्वाधिगतं दूतस्य चोभयोः । स्वयं चोपाजिते विना न पुत्रः स्वाम्यमर्हति ॥ कात्या. सू. by हस्तिक. II. pp. 279-280, स्वय. नि. p. 410.

matters.<sup>1219</sup> Vide pp. 552-560 about the origin of Dayabhaga doctrines.

In the preceding pages reference has been frequently made to sons, to their rights in ancestral property by birth and to their shares on partition. It is now time to refer to the various kinds of sons, principal (*mukhya*) and *gauya* (subsidiary or secondary).

In H. of Dh. vol. II. pp. 560-561 passages from the Rgveda, the Tai. S., Śat. Br., Ait. Br., the *sūtras* and *smṛtis* emphasising the importance of a son for the spiritual welfare of a man have been cited. The principal purposes served by the birth of a son are succinctly stated in the Ait. Br. 33. 1. viz. the son enables the father to pay off the debt he owes to his ancestors, to secure immortality (*amṛta*) and heavenly worlds. These were the main purposes deemed to be served by a son in most remote times. Manu (IX. 106-107) and Yāj. I. 78 also mention these benefits. The desire was to continue and perpetuate the family (*parithiṣṭha carochetah* as the Mīt. has it) and to provide for the performance and preservation of religious *sūtra* and offerings. This desire was common in ancient societies almost everywhere. The Śat. Br. XII. 4. 3. 1 (S. B. E. vol. 44 p. 157) states 'the father in later life subsists on the son and the son in early life subsists on the father'. The Nirukta<sup>1220</sup> (III. 4) quotes a *ślo* verse 'thou

1219. Vide 'Notes on Buddhist Law' by John Janline and 'Principles of Buddhist Law' by Chan-koen (Rangoon, 1894) for the *Dhammathats* (*Dharmasūtras*), their origin from Indian Codes and words and contents and *Mah Nhin Ewin v. U. Schwa Gons* L. R. 41 I. A. 121 pp. 131-139 for detailed remarks on the 36 *Dhammathats* of which the *Manu Kyay* is the most important and which were derived in their remotest origin from the laws of Manu. In (*Champā*) by Dr. R. G. Majumdar in Inscription No. 63 of Jayavarman II dated *śaka* 1010 it is said 'He followed 18 titles of law prescribed by Manu (*Manuśāstra*).' (Manu VIII. 3. employs the words अष्टादशानुशासने निबद्धानि. Vide also 'Indian Influence on the Literature of Java and Bali' by H. Manen Bhushan Sarkar pp. 93-94 and 104 for the influence of Manu on Javanese and Balinese codes and Dr. Majumdar on 'Savarādharma' part II pp. 1-23.

1220. मदेष्टहस्त्रोक्तममनुकम् । अष्टादशानुशासने इत्यादिपिनामम् । आत्मा वै पुत्रनामामि स जीव इत्यर्थः इत्यम् ॥ निबद्धं III. 4. This verse is found in चौबीसविंशत्यर्थ 4. 11 and is prescribed as a *mantra* in the Āp. Mantrapāṭha II. 11. 33 for recital in *śāntikarma*, in अथ. सू. I. 15.11 and मातृवृत्त I. 18. 6. Vide H. of Dh. vol. II. p. 235 n. 337. It occurs also in चौ. ध. सू. II. 2. 15-16 (as a quotation) and in सङ्कलित (q. by वि. र. pp. 534-535). The first half occurs in बृह. उप. VI. 4. 9 in another connection and the whole of it in आदिपर्व 74. 63.



art born from each of the limbs, from the heart (of the father), thou art indeed one's own self called son; mayst thou live for a hundred autumns!'. Gradually the idea arose (probably suggested by etymologists) that the son saved the father from the Hell called *pit*,<sup>1221</sup> as stated by Manu IX. 138 (= Ādiparva 229, 14 = Viṣṇu Dh. S. 15, 44). The son's close connection with the offering of *pinda*s to the ancestors is not much emphasized in the oldest works. But in the *sūtras*, in Manu and the other *smṛitis* this aspect of the benefits derived from the son is far more prominent than the others. In speaking of the *putrikā-putra* Manu (IX, 136) declares 'he should offer *pinda*' (to his maternal grandfather) and take the latter's wealth. As three descendants (son, grandson and great-grandson) presented *pinda*s to the ancestor, all three had extravagant praises bestowed on them. Manu IX, 137 says: 'a man secures the (higher) worlds through (the birth of) a son, he obtains permanence (in those worlds) through a grandson, through the son of a grandson he wins the world of the Sun'<sup>1222</sup>. The Viṣṇudharma-sūtra 85, 67 declares<sup>1223</sup> 'A man should desire to have many sons (with the thought) that some one out of them may go to Gayā or offer the *Āsvamedha* sacrifice or let loose (in honour of the deceased father) a dark bull'. Br. (q in Par. M. I. 2 p. 305) states: 'the *pitṛ*s afraid of falling into Hell desire to have sons; (they think) one of them may go to Gayā and that one will save us; he will set at liberty a bull, he may perform sacrifices and execute works of public utility (like tanks, temples and parks), he will take care of us in our old age, he will offer *śrāddha* day by day'. The *Matasyapurāṇa* 204 (3-17) contains verses (that are called *pitr-pāthā*s, verses sung by *pitṛ*s) which breathe the hankerings of deceased ancestors after what

1221. The *śrī. Sūtraparibhāṣā* I. 2, 5, quotes 'पुदिति नरहरपालया दुःखं च नरकं विदुः । पुदि बाणासतः पुत्रान्निष्कान्तिं वरञ्च च' ; अङ्गलिक्षित q. by वि. र. p. 333 state आत्मा दुःख इति शोकः पितृर्मातुरनुग्रहात् । दुष्काम्यस्तः पते परमायुर्वस्तेनास्ति संज्ञितः ।

1222. पुत्रेण लोकाजयति पौत्रेणामन्यतममुने । अथ पुत्रस्य पौत्रेण जगन्मर्यादेति विदुः पम् ॥ मनु IX, 137. This verse occurs in Vas. 17, 3, श्री. व. बृ. II, 9, 7 (reads last *pinda* as मातृमेवाधिराहति), विष्णुप. सू. 15, 46.

1223. एवमुक्तं ब्रह्मः पुत्रा जयेकोपि मर्वां वजेत् । एवेत वाभ्यर्पेय नीलं वा हवमुत्तमेत् ॥ विष्णुधर्मसूत्र 85, 67 = मत्स्यपुराण 22, 6 = वायु 150, 10 = ब्रह्मपुराण 220, 32-33 (which reads मीरिं वायुद्वहेक्यया नीलं &c, मत्स्य (207, 39-40) calls this verse an ancient *gāthā* and reads as in ब्रह्मपुराण. Compare अश्विहृति verse 35 for almost the same verse. कश्चान्ति पितरः पुत्राज्जरापातनीरकः । मर्वां वारयति वा कोवि-  
त्सोरमात्मन्तारयिष्यति । करिष्यति दुर्वात्मनमिहाहूतं वषेच । । पादापिपतिं हृदये स्वाहं वारयति चाभ्यहम् । बृह. q. by परा. मा. I. 2, p. 305.

they expect their descendants to do such as offering water in holy rivers, *śrāddhas*, going to Gayā, gifts of various kinds, construction of tanks, &c.

It is not, however, to be supposed that purely secular benefits to be derived from sons were not thought of at all. People were alive to them but those benefits were submerged under the flood of extravagant ideas about the spiritual benefits derived from sons. For example, the Bṛ. <sup>1224</sup> Up. I. 5. 16, after mentioning the three-worlds of men, *pitṛa* and gods, declares that the world of men can be won only through the son ( while in I. 5. 17 there is eulogy of the son and instruction to him that he is Brahma, he is *yajña*, he is the heavenly world). Nār. IV. 5 says <sup>1225</sup> "fathers wish to have sons on their own account thinking in their hearts 'He will free me from low and high debts'", Kāt. (551) has a similar verse and makes the meaning of Nār. clear <sup>1226</sup>. Vide above ( under *ṛpādāna* pp. 416-417 ).

Besides the *aurasa*, eleven or twelve kinds of subsidiary sons are mentioned by most ancient *smṛti* writers. Āp. Dh. S. does not recognize any son except the *aurasa*. Āp. quotes certain verses which express the view of an ancient sage called Aupamaṅgani and which are also quoted by the Baud. Dh. S. according to which the *aurasa* was to be recognized as the only son ( vide H. of Dh. Vol. II. p. 602 n. 1417 for the quotation ) Āp. II. 5. 13. 16 emphasizes that there can be no real gift or sale of one's child ( *dānam kṛyadharmasācōpadyasya na vidyate* ). But Āp. Dh. S. clearly shows that it knew that *kṣetraja* sons were

1224. अथ ब्रह्मो ब्रह्म लोका मनुष्यलोकः पितृलोको देवलोक इति सोमं मनुष्यलोकः पुत्रेणैव जपन्तो नारायेन कर्मणा कर्मणा पितृलोको विद्यया देवलोकः । बुध. उप. I. 5. 16.

1225. इच्छन्ति पितराः पुत्रान् स्वार्थहेतोर्वैतस्ततः । उत्तमर्णोपमर्णयोः नामयं सोमं विष्पति । नारदः ( कथादान 5 ) । कुत्स says to वदोत्कच in द्वापर्व 175, 54 'इच्छन्ति पितराः पुत्रान् स्वार्थहेतोर्वैतस्ततः । इह लोकात्परे लोके तारविष्पति ये हित्वा ॥ 'जायमानोः इति सुशुक्लं पितृकण्डलमे ब्रह्मणा देवमथममुष्मिणिवर्धः । ति. ता. folio 181.

1226. पितृणां सुहृन्निर्जित्वा निर्जित्वाधमादृणात् । विमोक्षन्तु यत्तस्माद्विष्पति पितरः सुतान् ॥ कात्या. १. ७१ स्मृतिच. II. p. 169, परा. मा. III, 263.





Kind of son (acc. to Manu)	Gautama	Baudhāyana	Kautilya	Vasaleha	Hārini	Saṅkha-Likhita	Yaj.	Nārada	Dehmagati	Devala	Vishnu	Ādiśārva	Yama	Brahma-parāśara
1 Aurasa	...	1	1	1	1	1	1	1	1	1	1	1	1	1
2 Petrikāputra	...	10	2	2	3	5	3	3	3	3	3	3	3	2
3 Kṣetrāja	...	2	3	3	2	2	2	2	3	3	3	3	3	1
4 Dattā	...	3	4	9	8	7	9	7	9	4	9	8	7	9
5 Kṛtrima	...	4	5	11	...	...	9	11	7	11	12	9	10	6
6 Gṛdhratpanna	...	5	6	4	6	6	4	6	12	3	6	6	6	9
7 Agavidāha	...	6	7	5	11	9	7	12	3	3	6	11	...	7
8 Kānjua	...	7	8	6	5	4	5	5	4	10	4	3	5	10
9 Sahodha	...	8	9	7	7	10	8	11	3	11	7	7	11	8
10 Kṛita	...	12	10	12	9	8	10	3	10	6	12	9	9	11
11 Pannarbhava	...	9	11	3	4	3	4	6	7	9	8	4	4	4
12 Svayandatta	...	11	12	10	10	11	12	10	12	...	10	10	10	12
13 Saudra	...	...	13	...	12	...	11	...	8	...	...	12	...	13

1228. The *औरस* is called *स्वर्णजात* in *आदिपर्व* 120. 38. I understand *अनीत*, *परिकीत* and *स्वैरिणीपुत्र* in the *आदिपर्व* to be the same as *पुत्रिकापुत्र*, *शेवज* and *मुद्रज* respectively. *स्वर्णजातः* *अनीतश्च परिकीतश्च* यः पुत्रः । *पौत्रमर्षश्च कार्मीनः स्वैरिणीपुत्रश्च जायते* । दत्तः क्रीतः कुत्रिमश्च उपगच्छेत्स्वर्णं च यः । सहोदो ज्ञानिरेताश्च हीनपौनिपुणश्च यः । *पुत्रपूर्वतमाभावं सन्तः सिञ्चेत् वै पुत्रम्* । उपमादिपराहृतुः कार्मुक्येनैव वृत्तपक्षि । *आदिपर्व* 120. 33-35. I take *ज्ञानिरेता* as an adjective of *सहोद* and *हीनपौनिपुणः* as *सौद*. It has to be noted that the *अनुशासनपर्व* (49. 3-11.) mentions 20 sons in all and employs a peculiar terminology in several cases, viz. *औरस* (also called *अन्तरज*), *मिककज* (for *शेवज*), *पमुद्रज* (meaning *अनिपौनोत्पन्न*), *पतिवाराहमार्षाणं जात*, and speaks of *दत्त*, *क्रीत*, *अपवृद्ध* (= *सहोद*), *6 अवधर्मजः* (i. e. *अमुद्रोम*), *कार्मीन* and *6 अपमदः* (*चाण्डाल*, *जाय*, *वैद्य*, *मायघ*, *वासक* and *मुद्र*). The *Anuśāmana* (49. 11) expressly states that it is not possible to deny altogether the status of sonship to these sons (*पुत्रा इति न शक्यन्ते मिथ्या कर्तुं नराणि*). It then says (49. 20-21) that when a boy is abandoned by his parents and he is brought up by another and his natural parents are not known, he belongs to the caste of the man who brings him up and that even for *कार्मीन* and *अपवृद्ध* (*सहोद*) sons *sanskāras* are to be performed as if they were one's sons (49. 25-26).



Viṣṇu Dh. S. (15. 27) mentions 'yatra-kvaeanotpādita' (procreated anywhere) as the 12th and last. The com. Vaijayaṇṭi explains it in two ways: (1) procreated by a person on a woman, regardless of whether she is his own or another's wife or whether she is of the same caste or not, whether she is married or unmarried, whether her marriage has been consummated or not; (2) the son of a man from a śūdra woman not married to him. Even in the last sense he cannot be called *śaudra* (whom Manu IX. 178 and Yāj. I. 91 define as the son of a śūdra wife from a brāhmaṇa). Hārita as quoted in the V. R. p. 549 mentions a son called 'sahasā dr̥ṣṭa' (seen by chance), who seems to be probably the same as *kṛtrima*. The *śaudra* is omitted by several writers (even ancient ones) like Gautama, Kautilya and Hārita. Manu speaks of only twelve sons (IX. 158) and does not enumerate the *putrikāputra* among them, though he speaks of the *putrikā* (IX. 127 and 134 and elsewhere) as equal to the son. It is therefore that Br. (S. B. E. 33 p. 375 verse 33) states that of the thirteen sons mentioned in succession by Manu the legitimate son of the body (*aurasa*) and the *putrikā* (the daughter appointed as a son) continue the family. Vas. 17. 12 emphatically declares (*devādika dyauḥ putrūḥ puritmadṛṣṭāḥ*) that only twelve sons have been noticed by the ancient (sages) and it is no doubt true that most writers generally enumerate twelve. A *smṛti* text quoted by Haradatta on Gautama and by the Dattaka-mīmāṃsā mentions 15 kinds of sons. Vide note below<sup>1229</sup>. The number is arrived at by counting the *putrikā*

1229. श्रीरसः द्विविधा बीजिलेखनी द्विविधासुतः । गौतमस्य कानीनः सहोदरो पुत्रसंभवः । दत्तः जीताः सहोदृतः कुविनभाषविद्धसः । यत्र कञ्चोत्पादितश्च दत्तस्य दत्तपुत्रश्च ॥ रसुति १. by हरदत्त on नी. 28. 32. दत्त. मी. p. 68. The compound बीजिलेखनी is to be taken as बीजिल and लेखन. The word *bija* is the epithet of the man who is appointed to beget issue in the practice of *niyoga*, the बीजिल being the son begotten by such a man, who (the son) is deemed by some to be the son of both (of the begetter and of the husband of the wife). Dr. Jolly in Tagore Law Lectures on partition &c. p. 146 is wrong in taking 'bija' as 'the son procreated with another man's wife'. 'Bija' is employed by Gaut. IV. 3 and Manu IX. 51-53 in the sense given above. Vide H. of Dh. II. p. 599 n. 1409 for *bija*, *kyatra* (meaning wife) and *kyatrika*, सहोदरसंभवः पुत्रो द्वौ सुतौ कुण्डलोदयो । पत्नी जीयति कुण्डः स्याद्युते भवेति गोतकाः ॥ श्रीरसः लेखनश्चैव दत्तः कुविमकाः सुतः । दृष्टात्माता पिता कानि न पुत्रो दत्तको भवेत् ॥ पराशर IV. 23-24. Laghu-Āraṇyaka (21. 14-15) says that though certain sages provide that the Kaṇḍa and Gotaka sons should have the *samskāra* performed on them, that was the practice in other ages and that it is prohibited in the Kali age.

(daughter appointed as a son) and the putrikāputra (the son of the appointed daughter) as two, dividing the kṣetrāja into two viz. as the son of the begetter (*bija*) and as the son of the wife (i. e. of the husband of the wife) and the son produced anywhere (as mentioned by Viṣṇu Dh. S.) is 15th and the last. The Parāśarasmṛiti (IV, 23-24) mentions, besides Kuṇḍa and Golaka, only five kinds of sons.

It is necessary, before proceeding further, to give brief definitions of the twelve or thirteen kinds of sons from Manu and other writers. The legitimate son (*aurasa*) is one begotten by a man on his own wedded wife of the same caste. The putrikāputra<sup>1230</sup> is of two kinds: (1) a sonless man may appoint his daughter as his son (she is then called *putrikā* and treated as a son); (2) or she may be given to a person in marriage with the stipulation 'I give you in marriage this brotherless girl decked with ornaments; the son born of her will be my son'. In this case the son born of the daughter so given becomes the son of his maternal grandfather. The *kṣetrāja* (the son of the wife) is one who is begotten on a man's wife (or widow) by a *vyetra* (agnatic kinsman) or by one not of the same gotra, according to the rules of *niyoga*, when the man himself is either dead or impotent or suffering from (an incurable) disease. That is the son given (*dattaka* or *dattima*) whom his father or mother gives as a son affectionately in a time of distress with water and who is of the same caste (as the adopter). He is the son called *kṛtrima* (made) whom a man makes his son, the latter being of the same caste, being clever in distinguishing between right and wrong and being endowed with the qualities a son should possess. He is the son born secretly (*gūḍhotpanna* or *gūḍhaja* as he is called by Baud. and Yāj.), who is born in a man's house, it being not known who is his begetter; and he belongs to him of whose wife he is born. He is the son called *apariddha* (cast off) whom a man receives as his son after he has been abandoned by his parents or by one of them. The *kūṁśina* (maiden's son) is one whom a maiden bears secretly in the house of her father and he belongs to him who marries her afterwards.

1230. पुत्रिकापुत्रो देवः । तद्यथागद वसिष्ठः (१५. १२) — अत्रापुत्रो यदाश्रयामि तुम्हं कर्मणात्तद्वत्पुत्रः । अस्यां चो जायते पुत्रः स मे पुत्रो भविष्यति ॥ इति । अन्यपत्रात् स एव — पुत्रीकः पुत्रिकैव — इति । अस्मिन्पत्रे कर्मणैव पितुराश्रयेद्विकारादे कार्यम् । च. मयूख p. 167. In the first sense mentioned above in the text the word पुत्रिकापुत्र is dissolved as पुत्रिका एव पुत्रः ( = कर्मधारय ) and in the 2nd as पुत्रिकायाः पुत्रः ( = तदुद्भव compound). The Mīta. on च. II, 128 gives the same explanation.



The *sahodha* (received together with the bride) is the son born of a woman who was pregnant at the time of marriage, whether that fact was known or unknown (to the person marrying her) and he belongs to the person who weds the (pregnant) woman. The *kṛta* (son bought) is one who is bought by a person from his father and mother for making the boy his son, whether the boy be equal or unequal (in qualities). The *punarbhava* (the son of a remarried woman) is one to whom a woman, being abandoned by her husband or being a widow, gives birth after she contracts a second marriage of her own accord. He, who, having lost his parents or being abandoned by them without proper cause, gives himself to a man (as a son) is called *svayambhūta* (a son self-given). The son whom a brāhmaṇa begets through lust from a śūdra wife is called *pārasava* (or *śaudra*), since he, though living, is (like a) corpse.

The list of twelve or thirteen kinds of sons looks rather formidable, has puzzled and misled even great scholars into making all sorts of sweeping assertions and putting forward untenable theories about the origin and necessity of so many sons. For example, Dr. Jolly in his '*Recht und Sitte*' (English tr. p. 156) observes 'The twelve kinds of sonship, which to some extent are based on the illicit connection of the mother and for the greater part have nothing to do with the blood-relationship of the son with the father, are probably the most striking feature of Indian family law. The cause of this abnormal importance being attached to male issue is to be sought, according to the *smṛtis*, in the offering of sacrifices to the *manes* which depends upon the male issue; yet, however, originally an economic motive was perhaps a more important factor in it—to get for the family as many powerful workers as possible'. The learned writer appears to hold that the *smṛtis* regarded all the secondary sons as equally competent to confer spiritual benefit and that at one and the same time a man could have all or most of them as sons. But he is mistaken in both these respects. The very definition of *putrikāputra*, *kṣetrāja*<sup>1231</sup> and *dattaka* given by many of the *smṛtis* show that one who has already an *aśvina*

1231. अनुव्रजोऽनेन विहितः सुतो कुर्यात् पुत्रिकाम् । मनु IX, 127 ; पितृवृत्ते-  
पुत्रिकामनपयोऽपि यथावति चेष्टाऽस्मादर्थमप्यवसिति संवाच । मी. 28, 16 ; देवराष्ट्र  
मपिष्ठादा विधा सम्पत्कृतियुक्तया । यजेत्पितृभिनन्तस्या संस्तानस्य परिव्रजे ॥ मनु IX, 59 ;  
अनुव्रजेय कर्तव्यः पुत्रवर्तिनिधिः सदा । पित्रोदकक्रियाहेतोर्पश्मानसमाव्ययतः ॥ अत्रि 52  
व. ७ ; दत्त. मी. p. 3 and दत्त. च. p. 2.

son, grandson or great-grandson could not have a putrikāputra, a kṣetrāja or an adopted son. If the definitions of all the 12 or 13 kinds of sons are carefully analysed, it will be quite apparent that the long list is due to the ancient writers' great *penchant* for divisions and sub-divisions based upon very slight differences of circumstances. The several kinds can be classified into three or four groups as done by Devala.<sup>1232</sup> All the five sons called *dattaka*, *kṛita*, *kṣetrīya*, *sonarbhava* and *apaviddha* are sons who are affiliated by a person under various circumstances. There is no tinge of any illicit connection of the mother in any one of these, the one thing common to all of them being that they are the sons of one man and are treated by another as his. Similarly the *sonarbhava* and *kṣetrīya* are the legal sons of the man himself, but there is opprobrium attaching to them, because in the first case the mother contracted a re-marriage (which was very much condemned by the smṛtis) and in the other a brāhmaṇa married a śūdra woman (which also was looked down upon, if not absolutely forbidden as done by Yaj. I. 56). The *sonarbhava* son of a *devīja* is still called a *devīja* by Manu III. 181, but Manu only provides that he is not fit to be invited at a śrāddha. The putrikā (the daughter appointed as a son) is the man's own child and the putrikāputra also is the man's own grandchild and both these are special cases of adoption and no question of mother's illicit connection arises in these. So out of 13 kinds of sons, nine were entirely free from any taint of illicit connection. There remain only the four viz. kṣetrāja, gūḍhotpanna, kāṇina, sahodha. The kṣetrāja was in a class by himself and was a survival of an ancient practice prevalent in many countries all the world over, which had been condemned in India by Āp. (as shown above on p. 644) and his predecessors several centuries before the Christian era. It may, however, be pointed out that some medieval writers held the view that several secondary sons like the *dattaka*, *kṛita* &c. could be had by a man having no *aurasa* son.<sup>1233</sup>

1232. एते द्वादश पुत्रास्तु सन्तत्यर्पयिष्यावन्तः । आत्मजाः परजाश्चैव लुब्धा पादु-  
च्छिकास्तथा ॥ देवल q. by वाचनाम् X. 7 p. 147. वि. र. p. 350, हरद्वज on मी.  
29. 32. The आत्मज, पुत्रिका, सौमभ्य and सौद्रि would be आत्मज, the देवज would  
be परज, the दत्तक, कृत्रिम, कौल, स्वदेवज and अपविद्ध would be लुब्ध (and also  
पश्य) and गूढज, कान्निभ and सहोदर may be called पादुच्छिक.

1233a. Vide the दत्तकसिद्धान्तमञ्जरी of वात्सुक्य (D. C. Ma. No. 203 of  
1886-92, folio 11b) 'तस्मादुक्तकारणैकविधैः काम्यव्यवसायनद्वारा दत्तकान्मासिद्धि-  
यन्तं पुत्रान्तरमवश्यं आह्वयितव्यं दत्तकविधिः द्वैर्बहुवचनं विदुः संप्राप्तमेवेति  
सिद्धान्तः ।'



The chief concern of the smṛtis as shown clearly by the Anuśāsanaparva (chap. 49 quoted above on p. 545) and the com. of Nīlakaṇṭha was to provide for the maintenance and the performance of the saṁskāras of those children that may be either abandoned by their parents or may be under the cloud of illegitimacy.

There is great confusion and contradiction among the sūtras and smṛtis about the place of the several kinds of sons and about their rights. For example, Gautama (probably the most ancient among extant sūtrakāras) assigns the 10th place to the putrikāputra, while Baud., Kaut., Yāj., Br. and Devala give him the 2nd place and Vasīṣṭha, Saṅkha-Likhita, Nār., and Viṣṇu put him 3rd. The *dattaka* is placed very low in the list by most works except by Manu, Gaut., Baud., Br. and Brahmapurāṇa (which put him 3rd or 4th). The 12 kinds are put in two groups by some works. Gaut. (28. 30-31) provides that the *aurasa*, *ksetraja*, *datta*, *krtrima*, *gūḍhotpanna* and *apaviddha* are *rikthabhājah* (take the wealth) and also belong to the *gotra* of the man whose sons they are, while the other six take only the *gotra* but not the wealth. Baud. Dh. S. (II. 2. 36-37) employs the same words *rikthabhājah* and *gotrabhājah* but differs from Gaut. in including putrikāputra among 'rikthabhājah' and omitting him from the group of 'gotrabhājah'.<sup>1233</sup> Another division (each having six kinds) is into *banīhu-dāyādā* or *dāyādabāṇdhava* (Manu IX. 158-159 and Nār. dāyabhāga 47) and *adāyādabāṇdhava* (Manu IX. 160, Vas. 17, 38, Nār. dāyabhāga. 47). The first group, acc. to Manu, comprises *aurasa* (also putrikā), *ksetraja*, *datta*, *krtrima*, *gūḍhotpanna* and *apaviddha*. They are so called because they take the wealth of their father and also of his kinsmen (in the absence of nearer heirs), while the members of the 2nd group (which acc. to Manu IX. 160 comprises *kānta*,

1233. वृषा औरसकेवजगृहिमृदोपजापदिद्धा रिषभभाजः । कानीनसहोदयोममेव-  
पुत्रिकापुत्रसर्वपुत्रजीता मोक्षभाजः । श्रौ. 28. 30-31; एवं गोत्रभाजो मोक्षमेव केवलं भजन्ते  
न रिषभम् । पूर्वं तु रिषभभावो गोत्रभाजयोस्तेन सहाभिधानात् । सर्वे चैते सजातीयः ।  
वृषद्वय. What is meant by रिषभभाजः is not quite certain. Does it mean  
'they take the wealth of their father and of his kinsmen' or does it mean  
'they take the wealth of their father alone and of no one else'. देवदत्त  
appears to hold that वन्धुदापाद्य has the first sense. तेषां वद् वन्धुदापादाः पूर्वोक्तं  
विदुरेव वद । देवदत्त q. by वाचस्पति X. 7 p. 147. Both the śūtra, on Br. II. 132 and  
the वाचस्पति explain वन्धुदापादात् in the first of the two senses set out above, 'और-  
साद्वयः वद् न केवलं पितृदापहराः किन्तु वन्धूनामपि सपिण्णादीनां दापहराः । अथ वरचूताः  
पितृसह वर्ग दापहरा न सपिण्णादीनाम् । वाचस्पति X. 8 p. 147. स्वर्पजातः पितृवन्धूनां  
च दापाद् । परं जातः संसर्गद्वयेन न वन्धूनाम् । अर्थशास्त्र III. 7.

sahodha, kṛita, paunarbhava, svayandatta and saundra) are only bāndhavas (i. e. belong to the gotra of their father), but cannot succeed to the wealth of their father's kinsman. Here also there is no agreement among the smṛtis. Vas. (17. 5-25), Sankha-Likhita (q. in V. R. p. 247), Nār. dāyabhāga 47 and Hārta include in the first group aurasa, kṣetrāja, putrikaputra, paunarbhava, kṛita and gūdhaja and the rest in the 2nd group. Kaut. asserts that only the aurasa son succeeds as heir to the kinsmen of his father while the others (that are not procreated by him) succeed only to the father who brings them up, but not to his kinsmen. Yāj. II. 132 states that each of the twelve kinds mentioned by him takes the wealth of the father and offers *pinda* to him in default of the preceding one and further requires that this is so only if it is certain that the sons are of the same caste as that of the father. Gaut. 28. 32 states that<sup>1234</sup> the kṛita and the other sons called *gotrabhājah* (in 28. 31) take only one fourth of the estate of the father if no aurasa nor any of the other sons called *rikhabhājah* exists (and the rest of the estate is taken by the sapindas), while Kaut., Devsīa and Kṣi. (857) state that the dattaka, kṣetrāja and other kinds of sons are entitled to one third share only if an aurasa is born provided they are of the same *varṇa* and that if they are of a different caste, they are only entitled to food and raiment. If a man, having no son, made his daughter a putrikā or thinking himself to be impotent had a kṣetrāja son or adopted a son and then an aurasa son was born, difficult questions of the distribution of his property arose on which there was no unanimity. Manu IX. 163 says that only the aurasa son is entitled to all the paternal wealth and all the other kinds should be given maintenance in order to avoid the fault of being cruel. But as regards the case where a putrikā is first made and then an aurasa is born Manu (IX. 134) prescribes that these two should divide the paternal estate equally,<sup>1235</sup> while

1234. चतुर्विंशति जीरसाद्यभावे । गौ. 28. 32 ; वेदां सवर्णां ये दृष्टान्ते पुत्रीप्राप्त-  
भावेन । श्रीमत्समुद्रदीपेदुर्वासाच्छादुनमपिपुः ॥ देवस्य q. by द्वापमान X. 7. p. 147 ;  
उपके जीरसे दृष्टे चतुर्विंशतिराः पुत्राः । सवर्णा असवर्णास्तु द्वासाच्छादुनभावेन ॥ कात्या.  
q. by मित्रा. on वा. II. 132. द्वापमान X. 13 p. 148 and वि. वि. p. 150 read पुत्री-  
प्राप्तपुत्राः 16 कात्या. ; जीरसे दृष्टके सवर्णास्तुतीप्राप्तपुत्राः । असवर्णा द्वासाच्छादुनमपिपुः ।  
अथशास्त्र III. 7. The समुद्ररत्न (folio 93b) says कल्पवल्क read 'पुत्रीप्राप्तपुत्राः'.

1235. सुहृदपति appears to combine Manu IX. 163 and 134 'एक एवैव ।  
विधेये एवैव स्वामी पत्नीभिः । समुद्ररा पुत्रिका जीरसा भर्तृव्यापारपरे समुद्र ॥ q. by वि. .  
p. 241, कात्या. वि. p. 437, समुद्ररत्न (folio 93b).









order by Manu, out of whom only the aurasa and putrikā are the cause of propagating the line. Just as oil is declared by the good to be a substitute (in sacrifices) in the absence of clarified butter, so the eleven kinds of sons in the absence of aurasa and putrikā<sup>1238</sup> (are admitted merely as substitutes and not the real thing). Although Yāj. II. 132 declares that each succeeding one out of the twelve kinds of sons takes the estate in the absence of each preceding one and offers *pinda* to the deceased owner, yet the efficacy of the *pindas* offered by the several sons was deemed to differ very much. Manu leaves no room for doubt on this point when he says (IX. 161) 'a man desiring to cross beyond the gloom (of bad worlds, hells) through (or with the help of) bad sons (such as the ksetraja) secures a result similar to what a person crossing (a sheet of) water in a leaking boat secures'. The idea is that secondary sons cannot confer the same spiritual benefit as the aurasa son can. Medhātithi on Manu IX. 166 and the D. M. explain this very clearly. An aurasa son confers the highest spiritual benefit. The substitute sons (as indicated by the very use of the word *pratinidhi*) confer a much less benefit. Even a man's widow can perform his śrāddha if he be sonless, but as she could not offer the *pāruṣa śrāddha* her act was not deemed to be as efficacious as a śrāddha performed by a son.<sup>1239</sup> Jaimini devotes several sūtras to the subject of *pratinidhi* (a substitute) in VI. 3. 13-41. The main conclusion established is that generally speaking there can be no substitute as regards the *devatā* (the deity to which a particular offering is directed by the Veda to be offered in a particular sacrifice), the fire (*āhavanīya* and other consecrated fires), the *mantra* (which is to accompany a particular offering) and certain rites specifically prescribed to be done in a sacrifice (such as 'samīdho yajati' in Darśa-pūṣamāsa) and the *sūtin* (the sacrificer). On Jaimini VI.

1238. कानीमसहोदपीनर्भवमुद्रोत्पन्ना न रिष्यन्मात्रः द्रवकादृक्पुत्र रिष्यन्मात्रोऽसत्पौत्रश्चे कानीमादृक्पुत्र सत्पौत्रस्य न पिबुष्यन्महर्षः प्रासाच्छादयन्मात्रः केवलं सत्पुत्रस्य चौरस्य । मेधा. on मनु. IX. 161; औरसाद्यमात्रं तु कानीमादीनामपि सकलविषयमग्रहणमन्वयेत् । पूर्वभागे उक्तं परं—इति वचनात् । मिता. on या. II. 132.

1239. यथापि द्रवमात्रे तु वली स्वादिरकादिना पल्पमादीनामपि क्रियाधिकारः श्रुते यथापि मादृक्पुत्र लोकोत्थीत्यादिभ्यश्चात् द्रवद्रव्यक्रियाजन्या लोका न कृपादिवृत्तिविषया जन्मन्त इत्यवर्गं प्राचक्ष् । ... उक्तं च मेधातिथिना । यदौरतत्पुत्र पथमकल्पिकालवचनं तत्र पक्षकारोपयोगि किं तु उपकाराधिकारस्य । पर्यायसौ पूर्णसौ शक्योऽनुपकारं कर्तुं न तज्जित इति । द्रवकाद्यपक्षपातिमात्रस्य यत्किञ्चिद्विषयवहार इति । द्रव. ली. pp. 38-39. The passage quoted from Meha. occurs in his text on मनु IX. 166 (with slight variations).

3. 35 Śābara makes<sup>1240</sup> it clear that in employing a *pratinidhi* the vedic rite becomes deficient and does not yield the full reward of the religious act. The Satyasaḍha Śr. S. III. 1. asserts<sup>1241</sup> that there can be no substitute for the sacrificer, the wife, the son, the place, time &c. (prescribed by the Vedic texts for any rite). Therefore it is clear that there was difference of view among very ancient writers about the spiritual benefit to be derived from substitute sons. The natural human tendency to simplify matters and water down strict injunctions prevailed and it began to be thought that even subsidiary sons conferred some spiritual benefit (though not as much as the *aurasa* son). For about two thousand years the *ksetraja* and other sons have been prohibited by the *smṛtis*. For example, Br. states that Manu first describes the procedure of *nirgoga* and then forbids it, that it is impossible to practise *nirgoga* in the *deūpara* and *kali* ages owing to the deterioration in man's knowledge and *tapas* (vide H. of Dh. vol. II. p. 603 n. 1418 for the quotation). The passage from Śaunaka forbidding sons other than *aurasa* and *dattaka* in the *Kali* age quoted by Aparārka and others has been cited above (n. 1131).

A few remarks will be made on each of the several sons.

*Aurasa*. Baud. Dh. S. II. 2, 14, Manu IX. 166, Vas. 17. 13, Viṣṇu Dh. S. 15. 2, Kauṭ. III. 7 and others define the *aurasa* as the son procreated by a man himself from his wife married acc. to sacramental forus prescribed by the *sūtra*. From Āp. (quoted above in n. 1227) and Baud. it follows that the *aurasa* is only the son procreated on a wife of the same *varṇa* as that of the husband; but this was the purists' view. Others including

1240. अभावे हि अन्तर्वासुकरणः प्रतिनिधिः । अने हि सकला व्यवसा । प्रतिनिधी निष्कलः । शबर on तै. VI. 3. 35.

1241. न त्वानिमित्त्य भाषायां पुत्रस्य देशस्य कालस्यार्थेनैव तावत् कर्मणः शब्दस्य च प्रतिनिधित्वमेत । सत्याषाढश्रौत III. 1. The D. M. (pp. 33-34) explains this *sūtra* about there being no प्रतिनिधि in place of a son by saying that it is restricted to certain *śrauta* matters only such as the 'Pitṛpatriya sāman', or the uttering of a benediction in the words 'tantave jṛṇṇamāṇa &c.' and that if the *sūtra* were taken as forbidding a substitute for a son everywhere, it would be opposed to Manu (IX. 180 पुत्र्यतिनिधीनाहुः) and Atti. चट्पति 'न त्वानिमित्त्य ... प्रतिनिधिः' इति सत्याषाढवचनेन पुत्र्यतिनिधिनिराकरणं तत् 'तन्मते उपोतिष्मन्ती तान्मतिषिष्यतामसते' इत्यादौ अनुवच्य पुत्र्यतिनिधिं कृत्वा आशीर्वादात्मनिराकरणम् । अत्र एव अतिः परमं पुत्रो जातः स्यात् तन्मते उपोतिष्मन्तीति विज्ञातम् । ... न पुनः सर्वथा पुत्र्यतिनिधिनिराकरणार्थम् । पुत्र्यतिनिधिः कर्मणः पुत्र्यतिनिधीनाहुः रित्यादि-सुतिविरोधात् । दत्त. नी. pp. 33-34. Vide तै. सं. I. 5. 8;



such medieval works as the *Mit.* (on *Yaj.* II. 133), the *Pārijāta* and *Aparārka* hold that even the son procreated on a wife married in the anuloma order<sup>1242</sup> (e.g. the son of a brāhmaṇa from a kṣatriya wife or of a kṣatriya from a vālsya caste wife) was also *aurasa*. The exception was the son of a brāhmaṇa from a śūdra wife, who was called *śūdra* or *pūruṣa* and distinguished from the technical *aurasa*. From the definition of *aurasa* given by all smṛti writers (and the dicta of such commentaries as the *Mit.*) it follows that in order to be an *aurasa* the procreation and the birth of the son must both be after the marriage. But the Privy Council held long ago in *Podda Amam v Zemindar of Marungpur* (1 I. A. 282, 293) that procreation after marriage is not distinctly necessary for legitimacy as a son even according to the ancient texts, that to hold so would be an inconvenient doctrine and that the Hindu Law is the same in that respect as the English Law.<sup>1243</sup>

From the times of the Rgveda people prayed for the birth of an *aurasa* son and did not like to adopt the son of another. A Rgvedic poet exclaims (VII. 4. 7-8) 'As the wealth (son)

1242. स्वर्णजातः कुलप्रियापामौरसः । अर्धशास्त्र III. 7: स्वर्णोपो संस्कृतापो स्वय-  
मुत्पादितमौरसं पुत्रं विधातु । नी. ध. सू. II. 2. 14: 'स्वर्णा द्वित्रय द्विजा, शुद्धस्य शुद्धा-  
नसु जाद्वयस्य जाद्वनी अत्रिचस्य अत्रिया, अम्बसा जाद्वयपरिणीतक्षत्रिषा पुत्रादेर्द्विज-  
पुत्रान्वभोपो न स्यादिति पारिजातः । वि. र. p. 254: 'ज्याशुद्धोमजातो मूर्धोपसिक्तादीना-  
मोरस्यजन्मार्थोपायमप्यन्ये जन्मजादीनां द्वावधारं बोद्धव्यम् । शुद्धपुत्रस्योरसादि  
कुलसं वाप्यन्यथावैपि न हन्यते । पद्माद्व. मनुः ( ५. 349 ) । मिश्र. on वा. II. 133: अर्धज-  
सुतोमजस्योरसेषु सप्तसु न परितोषिष्यन्ति । अपराह p. 740. Vide मद्. पा p. 651 for the  
same views. The मनुस्मृतम् (folio 93a) however remarks, 'सायनं मूर्धोपसिक्तादीनो  
न चाप्यन्यथेन नेह पर्यजितः'. Vide n. 1130 above. The position of the *Mit.* is  
somewhat remarkable. The *Mit.* admits that *niyoga* is not allowed in the  
present Kali age [vide above p. 625] and it quotes a smṛti text to that  
effect, but it allows the sons of anuloma marriages to be *aurasa* and to  
succeed before every other kind of sons. Therefore it follows that the  
*Mit.* either did not know the passages of *Saunaka* and of the  
*Nāradyāpurāṇa* (pūrvaśāha 24, 13.) which forbade marriage with  
*asvavarna* girls for the twice-born classes in the Kali age or did not hold  
them to be authoritative. द्विजानामस्वर्णासु कर्णधृषणस्तथा । ... मन्वाद्यन्तं कश्चि-  
दुच्यते स्वर्णासुर्गर्भविजः । शुद्धकारदीपपुराण (पुर्वशि 24, 13 and 16).

1243. As this is a decision of the highest tribunal for British India it  
must be taken to be the law. The Privy Council was probably influenced  
by the description of such secondary sons as the *asubhā*. The decision is  
in accordance with English Law and section 112 of the Indian Evidence  
Act. Vide Dr. Bannerjee's 'Marriage and stridhana' p. 177 for criticism  
of the P. C. decision.

of another (who is unconnected) is to be avoided, so may we be masters of wealth of our own (i. e. son of our body); O! Agni, the child of another cannot be one's offspring; it may be so in the case of the fool; do not spoil our path. A stranger, born of another's loins, though very pleasing, should not be taken, should not be even thought of in the mind (as one's son). Then he goes back to the same house (from which he came); may a vigorous, victorious, newly born son come to us!"<sup>1244</sup>

In modern times the courts generally recognize only two kinds of sons, viz. *aurasa* and *dattaka*, the other kinds of sons being held to be long since obsolete. Vide *Nagindas v. Bachoo* 43 L. A. 56, 67. But two more kinds of sons have been recognized in modern times in certain provinces only, viz. the *kṛtrima* in Mithila (modern Tirhoot) and the *putrikāputra* among the Nambudri brāhmanas of Malabar, both of which will be dealt with below.

*Putrikāputra*. The two meanings of this word given by the Mit. and others relying on Vaa. have been stated above (p. 647). Kaut. III 7, Yāj. II. 128, Manu IX. 134 declare the putrikā or putrikāputra to be equal to the aurasa son. The conception underlying the putrikā has a hoary antiquity. There are traces of the putrikā in the R̥gveda itself. Vaa.<sup>1245</sup> XVII. 16 refers to

1244. परिदत्तं ह्यरजस्य रेज्यो निषत्त राघः पतयः स्वाम । न तेषो अग्रे अप्यजात-  
मस्त्यचेतानस्य मा पथो वि बुधाः ॥ न हि व्रमायारणं सुतेषोऽप्योदयो मनसा मन्त्रा उ । अथा  
विदोषः पुनरिह राघा मे वारवनायस्मिन् नमः ॥ अ. VII. 4, 7-8. The verses are  
rather obscure, particularly the first one. The meaning given above is that  
of such an ancient writer as Yāska in Nir. III. 1-3. He says that these two  
verses support the view that the son belongs to the begetter (and not to  
the adopter): 'तस्य जनयितुः मया पृथगर्थेयि ज्ञातुदाहरिष्यामः । परिदत्तं ।'  
Compare आप. ध. सू. II. 6. 13. 5 'इत्यादयितुः पुत्र इति हि ब्राह्मणम्'. The निष-  
त्तियु says that the verse ( न हि व्रमाय ) does not really mean 'to prohibit the  
adoption of sons but is intended to extol the aurasa, as otherwise it would be  
opposed to the indications contained in the story of the acceptance of  
Sunahśeepa as a son and to the words of the latter 'may I become your son'.  
यथैव न हि व्रमाय ... मन्त्रा उ—इति श्रुतौ दत्तकमित्येषः सोऽप्यौरसादिति राघः, अथवा  
ब्रुवः शेषादिभिर्निष्ठो भवेत्तद्विदोषविरोधापत्तेः । उभयो तत्र दूततामित्युक्तः । नि. नि. III  
पुनरि प. 230. उभयो तत्र दूतताद् are the words of शुनः शेषेण in मे. अ. 33. 5.

1245. विज्ञापते अद्यातृषा पुंसः पिदृमन्वेति यतीचीनं मय्यस्ति दूतताम् । वसिष्ठ  
17. 16: अद्यातेषु पुंस एति यातीचीं गतांस्मिन् सन्ने धनमाय । जायेव धन उताती क्षुपाया  
उपा तमेव नि रिणीते अस्मत् ॥ अ. 1. 124. 7: the निरुक्त (III. 5) comments 'अद्यातृकेषु  
पुंसः पिदृमन्मिदुर्गो सन्तानकर्मणे पिण्डदानाय न पतिव । ... उपा इमना ह्य दूतताम् विह-  
स्यते क्षपाणि ।' अद्यातृ वन्ति यतीचीनो हिरा स्तोत्रितवासरः । अद्यातर ह्य जायमानस्तद्वन्तु  
हन्तव्यसः ॥ अद्याते इ. 17. 1. The निरुक्त III. 4 reads अद्यातर ह्य योषास्तिष्ठन्ति  
हन्तव्यसः and explains अद्यातृषा ह्य योषास्तिष्ठन्ति सन्तानकर्मणे पिण्डदानाय हन्तव्यसः ।  
इति अद्यातृकाया अनिवार्य औपनिषद् ।



Rg. I. 124. 7 in connection with putrikā. That verse contains four similes in describing the advent of *Uṣas* (Dawn) 'As a woman that has no brother comes back to (her) male relations,... like a smiling damsel the Dawn unmasks objects (or her beauty)'. The Nirukta (III. 5) explains the first quarter as meaning that a brotherless maiden (after marriage) comes back to her paternal line for continuing that line and for offering *piṇḍas* (to her paternal ancestors) and does not go to her husband's line. The Rg. in several places refers to the difficulty of getting brotherless maidens married and to the fact of their remaining in their father's house as old maidens; vide Rg. II. 17. 7 '*amājīr-ita pitroh aśāṁ sātī*' and IV. 5. 5. The Atharvaveda I. 17. 1 states 'like brotherless sisters let these stand still with their splendours gone'. Yaska explains that, as brotherless maidens, when married, bar the way to the continuance of the family of their husbands and to offering of *piṇḍas* (through their son), so are these red arteries &c. Yaska (Nirukta III. 4) relies for the appointment of a brotherless daughter as a son upon another very obscure verse of the Rg. (III. 31. 1)<sup>1246</sup> 'the husband declares (or promises) that the father may regard (the daughter's son) as his son's son'. The Nirukta<sup>1247</sup> (III. 5) quotes a Vedic text 'one should not marry a brotherless (girl), for she becomes (her father's) son' and holds that it expressly prohibits marriage with a brotherless maiden and also declares that such a girl becomes a son to her father. The brotherless maiden is appointed as a son by express agreement, but according to Gautama 28. 17 the opinion of one school (which he does not approve) was that a brotherless girl became a putrikā by the mere unilateral intention of the father and therefore one should not marry a brotherless maiden for fear that the father (without expressly stipulating so) might intend her to be putrikā. Manu III. 11 contains a similar caution. This recommendation not to marry a brotherless maiden continued down to the days of Yāj. (I. 53 '*aroginiṁ bhṛātmatim*'). though in modern times many would prefer to marry such a girl, provided the father was well-off. Manu IX. 140 states that the

1246. शामदङ्घ्रिदुहितुर्नर्यं गादिदौ कतरस्य द्योयिति सपर्यं । पिता यत्र दुहितुः सैकमुज्ज्वलं सै शम्भवेन सलसा द्युधन्ने ॥ अ. III. 31. 1. The Nirukta III. 4 explains यमाति बोधा सत्तामकर्मणे दुहितुः पुत्रभावम् । ... तस्माच्छुषामस्य दुहितुर्न द्योयमिति ।

1247. नात्राशीदुपपद्येतैनां ह्यस्य तद्वयति—इति अत्रातुकाया उपपन्नप्रतिषेधः अत्रातुः पित्रश्च पुत्रभावः । निरुक्त III. 5. विश्वम्भर on य. I. 53 states that नात्राशीम् &c. is a text of the Bhāṭṭavina. मेघा on मनु IX. 132 quotes नात्राशी ... तद्वयति, अभिसन्निधावापुदिकेन्येकेषाम् । तत्संशयाजोपपद्येद्वन्नातुकाम् । यौ. 28. 17-18.

three pīṇḍas that the putrikāputra offered were respectively to his mother, to the mother's father and to the mother's paternal grand-father.

The putrikāputra is no longer recognised anywhere in India except among the Nambudri brāhmanas of Malabar. Vide *Thakoor Jeebuth v. Court of Wards* 2 I. A. 163, 167, *Babui Rita v. Babu Puram* 1 Pat. L. J. 581, *Kumaran v. Narayanan* 9 Mad. 260, *Chemnauth v. Palakazhu* 25 Mad. 662, 31 Mad. 310. It appears that even a Madras authority like the *Smṛticandrika*<sup>1248</sup> was not aware of the prevalence of the putrikāputra in Malabar.

*Kṣetrajā*. This kind of son arose from the practice of *niyoga*. The origin of this practice and the limitations under which it was allowed have been dealt with at length in H. of Dh. vol. II. pp. 599-607. One matter not mentioned therein is this that the *Brahmapurāṇa* states that kṣetrajā sons were very common among kṣātriyas since they had no progeny either because they were cursed (by sages for their misdeeds) or because they were constantly engaged in war.<sup>1249</sup> The Bauḍ. Dh. S. II. 2. 31-23 and Kauṣ. III. 7 declare the kṣetrajā to be the son of two fathers, to have two *gotras* and to offer pīṇḍas to both fathers (provided there is no aurasa son born subsequently) and to take their wealth and that in offering each pīṇḍa they have to associate it with two names.<sup>1250</sup> It is to be noted that the Mit. on Yaj. II. 127 introduces the kṣetrajā as *dvyāmusyāyana*, although that word, as will be seen later on, has another significance also. The *Madanapārijāta* (p. 651) also regards kṣetrajā and *dvyāmusyāyana* as synonyms. The *Vivādata-dava* (folio 122) states that the *dvyāmusyāyana* and sons of intercaste marriages being forbidden in Kail it does not enter into any discussion about the rules of allotting shares to them.

1248. अथ पुत्राभाविमत्तवर्गपुत्राणां दत्तकेतवेर्षा गार्ग्यपुत्राणां पुत्रिकापास्तानुसृत्य च मातृविधये न निवर्धन्ते संवत्सरेणैव विमाननाद् दूषा च व्रणवित्तादायकौ । स्मृतिच. II. p. 289. Vide a. 1130.

1249. राज्ञो नु शापदुष्प्राप्ता निर्वृत्तपुत्रा तथा । अथ संश्रामर्शालानां न कदाचिद्व-  
रन्ति ते । औपसे यदि वा पुत्रमरुषा पुत्रिकास्तः । विधत्ते न हि तेषां नु विज्ञेयाः केतनाद्व ।  
बह्वपुत्राण quoted by अथराज p. 737.

1250. स एव द्विविधः द्विगोत्रश्च द्वौपत्ये स्वपतिरित्यभाष्यति । अथापुत्रावन्ति ।  
द्विविधः पिण्डदाने स्वार्थं पिण्डे पिण्डे च नामनी । अथच विज्ञाः वरगो रुरां कुम्भं मुञ्चति ।  
इति । वा. घ. सू. II. 2. 31-23 : जनपिपुसत्त्वग्नयित्वरुषे स एव द्विविधोऽयं द्विगोत्रो वा  
द्वौपत्ये स्वपतिरित्यभाष्यति । अथराज III. 7 : 'द्वौपत्यपाणत्य विज्ञातोऽयानां च द्विगोत्रे  
विज्ञेयाः कलापसमाश्लेष्यते' इति. ता. folio 122.



*Dattaka.* This will be dealt with separately later on.

*Kṛtrima*—( or *kṛta*, as in Nār. *dāyabhāga* 46 ). According to Manu IX. 169, Yaj. II. 131, Baud. Dh. 8. II. 2. 25 and the Mit. and other works a *kṛtrima* is a person (of the same caste as the adopter) who has no parents and who is adopted with his own consent by the tempting offer of wealth. He is distinguished from the *dattaka* by the fact that he is not given by the father or mother and by the fact that his own consent is necessary (so that he must be major according to the ancient Hindu Law). Such a son is recognized in modern times only in Mithilā ( Tirhoot ) and the adjoining districts and among the Nambudri brāhmanas of Malabar (as held in *Vasudevan v. Secretary of State* 11 Mad. 157 ). Considerable case law exists about the *kṛtrima* adoption, for which Mulla's Hindu Law pp. 563-564 ( 9th ed. ) and Mayne's Hindu law ( 10th ed. ) pp. 293-294 may be consulted.

*Gūdhaja.* There is probably a reference to such a son in the Rg. II. 29. 1<sup>1251</sup> ' O ! Ādityas, that uphold the moral law, that are always active, keep away from me sin as a woman giving birth to a child in secret ( removes it ) '.

*Kānina.* This word is derived from the word ' *kanyā* ' ( a maiden ). Pāṇini IV. 1. 116 ( *kanyāyāḥ kāmīna ca* ) derives the word in the sense of " child of a maiden " and the Kāśīka gives Karṇa and Vyāsa as instances of *kānina* sons. The word *kānina* occurs in the Atharvaveda V. 5. 8 and *kāmūriputra* occurs in the Vājasaneyasamhitā 30. 6. Nār. ( *dāyabhāga* 17 )<sup>1252</sup> says that the *kānina*, *sahodha* and *gūdhaja* are the sons of the man who marries the mother of these and they take the wealth of the husband of their mother. The *Parijata* ( q. by V. R. p. 505 ) states that the *kānina* and *sahodha* become the sons of their mother's father if the latter is sonless, but if he has a son then they become the sons of the husband of their mother and if both have no sons then they become the sons of both.

*Kṛta*—( the son bought ). Vas. ( 17. 30-32 ) states that Hariścandra purchased Śunaṣṣepa from Ajigarta and that

1251. धृतराजा आदित्या इति च ऋते नृणां सुखरिणः । ऋ. II. 29. 1.

1252. कामीनश्च सहोद्विष्य युद्धार्थं यच्च जायते । तेषां बोद्धा पिता ज्ञेयस्ते च भागवतः स्मृताः । नारद, दायभाग 17 : on this Nār. p. 565 states ' अथाहुर्वो यदि मातामहोद्विष्य तस्य पुत्रः कामीनः सहोद्विष्य । सहोद्विष्येति बोद्धुः, उभयोरुद्विष्ये चोभयोरिति परिज्ञातः । ' . The मद्. वा p. 562, however, says about कामीन ' यच्च बोद्धुरित्युपादानाद्विज्ञादितो बोद्धुर्बो चोपादानमहोद्विष्येति स्मृतम् '.

Sunaśēpa was a kṛita son. *Svapathidatta*—Vas. (17. 33-35) says that Sunaśēpa became the svayam̐datta son of Vīśvāmitra as stated in the Ait. Br. (referred to above in n. 1244). *Paunarbhava* (the son of a *punarbhū*)—vide H. of Dh. vol. II pp. 608-610 for the meaning of *punarbhū* and the remarriage of widows (pp. 611-621).



## CHAPTER XXVIII

### DATTAKA (adopted son)

No branch of Hindu Law in modern times has been so fruitful in litigation as adoption. There are instances, where, fifty years after a point in the law of adoption was deemed to have been settled by a Full Bench decision, the Privy Council intervened and overruled the Full Bench decision in spite of its usual practice to follow the rule of *stare decisis*. The medieval digests are full of varying interpretations of the same *smṛti* texts and the law of adoption differs from province to province according to the authoritative medieval works and modern case law. Voluminous works like those of Shastri Golapchandra Sarkar and of Mr. Kapur have been written on the subject of adoption in all its details. There is so much bewildering confusion and so much case law on the several aspects of adoption that it is only legislation that can resolve the tangled skein of the modern law of adoption. In this section an attempt will be made to present the law of adoption as evolved by the *smṛtis* and medieval works and only some important cases bearing in various ways on the ancient law will be cited.

It has been shown above (pp. 641, 657) how even in the times of the Rgveda the son of the body was eagerly sought for and how the adoption of another man's son was declared to be not worthy of being thought of. Even so late an author as Śukra (II. 31) says that the adopted and other secondary sons should never be thought as one's sons, since on seeing a rich man they desire to be adopted<sup>1252a</sup>. Yet Vedic Literature contains some references to adopted sons. In the Tai. S. VII. 1. 8. 1 we come across the story of Atri,<sup>1252b</sup> who gave an only son in adoption to Aurva in these words: 'Atri gave his son in adoption to Aurva

1252a. ममत्तायेन ममत्त्वा दत्ताद्याः स्वसुतः इति । ते दत्तकानिच्छन्ति बहवः पद् धनिर्हं नरम् । छुक्कनीति II. 31.

1252b. अत्रिरवदादौर्वाप यज्ञो दत्तकमाय । स शिरिकामोऽग्र्यत निर्वीर्यः निष्किलो पातपाता स पते चतुर. अमपदकमाहरसेनापजत ततो मे तस्य चत्वारो धीरा आकापत कुडोमः सदाता स्वपदोः सुसमेतः । तै. सं VII. 1. 8. 1. For चतुरात्र, vide काला. ओ. 23. 1. 7 and आश्व. ओ. XI. 1. 16-26.

who desired to have a son. He (Atri), having become empty (as it were, by giving away his only son), thought himself to be destitute of strength, to be weak and worn out (lit. stale). He (Atri) saw this *catārūtra* (a sacrifice of that name lasting for four days). He made preparations for it and performed that sacrifice. Then he had four valiant sons born to him, a good Hotr, a good Udgātr, a good Adhvaryu and a good *sabheya* (skilful speaker in an assembly)'. The story of Sunaṣṣepa in the Alt. Br. (33) shows that Viśvāmītra, though he had already one hundred and one sons, adopted Sunaṣṣepa under the name Devarāta, with the consent of his fifty-one sons (with Madhucchandas<sup>1233</sup> at their head), though the elder 50 sons disobeyed their father. It must be supposed that the later rule allowing only a sonless man to adopt did not apply to Viśvāmītra.

The sūtras and smṛtis contain hardly anything about the dattaka except his name (among the 12 kinds of sons) or the definition, as in Baud. Dh. S. II. 2, 24, Manu IX. 168, Yāj. II. 130, Viṣṇu Dh. S. 15. 18-19, Nār. (dāyabhāga 46). The Vas. Dh. S. is an exception. It not only gives a definition (in 17. 28-29), but is one of the earliest smṛti texts to dilate on the rules about adoption (in 15. 1-9). What it says may be set forth in one place. "Man produced from seed and blood owes his birth to his mother and father. (Hence) the mother and father have power to give, to sell or to abandon him. But one should not give or accept an only son, for, he is required to continue the line of his ancestors. A woman should neither give nor receive a son (in adoption) except with the permission of her husband. One about to take a son in adoption should, after having invited his kinsmen, having informed the ruler (of the intended adoption) and having performed in the middle part of his house a *homa* with the *vyāhṛtis*, take only him who is closely related and who is a kinsman not remote (in habitation and speech). If a doubt arises (as to the family of the person to be adopted) he (the person desiring to adopt) should treat one whose kinsmen are in a remote place as if he were a *śūdra*; for it is declared (in the Brāhmaṇa or Vedic works) 'by means of one (son, aurasa or adopted) he (the adopter) saves many.' If, after a son is taken (in adoption), an aurasa is born (to the adopter) the adopted son shall be the recipient of a fourth

1233. सहेवाच सधुच्छन्दः । वज्राज्ञता सार्धं वक्रः पिता संजानीते अस्मिन्निष्ठामहे वयम् । इत्येता सर्वे कुर्महे लाभमन्वो वरं वसति । इति । दे. अ. 33, 6. This is q. by the दृष्ट. मी. p. 17.



share" 1254. Manu IX. 141 refers to the adoption of a son who is not of the same gotra as the adopter and IX. 142 sets out the results of adoption. The other principal ancient texts quoted by the D. M. and V. Mayūkha are those of Atri, Śaunaka, 1255 Śikala and the Kālikāpurāṇa. The Mlt. does not contain more than a few lines on the *dattaka*. It is only in such late works (belonging to the 17th century and later times) like the V. Mayūkha, the Dattakamīmāṃsā, the Sarṅskara-kaustubha, the Dattakacandrikā, that the *dattaka* receives an elaborate treatment. In modern times the D. M. and D. C. (which is branded as a forgery by some Bengal writers) 1256 have been regarded by

1254. धृक्प्रयोगितसम्भवा दुहयो भवति मातापितुर्निमित्तकः । तस्य उत्पन्नविक्रयराशेः मातापितरौ प्रभवतः । न त्वेकं पुत्रं दद्यात्प्रतिपुत्रीयाद्वा । स हि सन्तानाय पुत्रेषाम् । न ह्यी पुत्रं दद्यात्प्रतिपुत्रीयाद्वाप्यप्राप्तज्ञानाद्भर्तुः । पुत्रं प्रतिपुत्रीयात्पुत्रं वन्धुनात्पुत्रं राजानं च स्निह्य भविष्यन्तस्य सत्यं स्यात्प्रतिपुत्रीया अदुरवस्थायै वन्धुसंनिहितमेव प्रतिपुत्रीयात् । सन्देशे चोपपत्तेः दुरवस्थायै सुहृन्निव स्यादेव । पित्रापते स्वेकेन वधून्नायत इति । तस्मिन्नेवप्रतिपुत्रीया औरतः पुत्रं तपस्येन वतुर्धनमागामी स्यादतलकः । वासिष्ठ 15. 1-9. The Band. Gṛhyasūtrasūtra II. 6 has the first five and the last sūtras out of these. In Aparārka pp. 737-738, V. R. p. 368, the V. Mayūkha p. 117, V. P. pp. 477-478 and in the D. M. this passage is quoted. The V. Mayūkha reads स हि चाप्ये दुहय for स हि...पुत्रेषाम्, while the वि. st. (folio 124) reads स हि...पुत्रेषाम्. The Mlt. on Yāj. II 130 quotes a portion of this passage. On स हि सन्तानाय the V. R. p. 369 explains 'सन्तानोपपत्तेः हि विपद्योदकक्रियानिबृत्तिमहान्दीप इति प्रकाशः'. Aparārka pp. 737 and Sm. C. II. p. 193 read असंनिहितमेव and explain respectively 'असन्निधिममेव' and 'संनिहितप्राप्तपुत्रादिपारितोषिकमेव दुरवस्थायै', but these explanations are not good, since the brother's son is recommended as the best for adoption according to others. Therefore the explanation of V. R. p. 369 that असंनिहितमेव means असंनिहितमपि is preferable. The whole of this passage of Vas. except the last sūtra is quoted in *Ganga Sahai v. Lekhraji* 9 All. 253 at p. 300 and the first five sūtras in *Tulshi Rani v. Bahari Lal* 12 All. 328, 338 and *Jogesh Chandra v. Nrityakali* 30 Cal. 965 at p. 972.

1255. Vide Appendix for Śaunaka's verses on adoption and for Band. Gṛhyasūtras.

1256. As to the tradition among Bengal Pandits that the Dattakacandrikā was fabricated by a pandit called Raghunāth to support the claim of an adopted son to a *Rāj*, vide Golapchandra Śarkar's Tagore Law Lectures on adoption (2nd. ed. of 1916 pp. 122-126). It may, however, be noted that in *Bhagwan v. Bhagwan* 17 All. 294, 313 Mr. Justice Banerji refused to place any reliance on the tradition.

the Privy Council as of the highest authority in matters of adoption. In *Collector of Madurai v. Mootoo* 12 Moo. I A. 397 at p. 437 the P. C. observe: 'Of the Dattakamīmāṃsā of Nanda Pandita and the Dattaka Candrikā of Devappa Bhaṭṭa, two treatises on the particular subject of adoption, Sir William Macnaghten says that they are respected all over India; but that when they differ the doctrine of the latter is adhered to in Bengal and by the southern Jurists, while the former is said to be the infallible guide in the provinces of Mithila and Benares'. But Jolly (T. L. L. p. 168) gives a far more correct estimate of the value of the D. M. when he says 'It is simply a misfortune that so much authority should have been attributed in the courts all over India to such a treatise as Nanda Pandita's Mīmāṃsā which abounds more in fanciful distinctions than perhaps any other work on adoption and it is high time that the numerous other treatises on adoption should be thoroughly examined and given their due weight'. In *Bhagwan v. Bhagwan* 26 I. A. 153 at p. 161 the P. C. observe 'To call it (the Dattakamīmāṃsā) infallible is too strong an expression and the estimates of Sutherland and of West and Bühler seem nearer the true mark; but it is clear that both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law'. Yet even these works have been set at naught and departed from by Courts in India on many points as will appear in the sequel.

The principal matters to be discussed under adoption are: object of adoption, persons that may legally take in adoption, persons that may give in adoption, persons that may be taken in adoption, the requisites and ceremonies of adoption and the results of adoption.

*The objects of adoption*—Atri (verse 52) quoted above in note 1231 declares that that man alone who has no son should always secure a substitute for a son with all possible effort for the sake of securing the offering of pindaś (funeral and śrāddha cakes) and water. The D. C. quotes this verse and also another ascribed by it to Manu<sup>1257</sup> in which the object of adoption is said to be twofold, viz. securing spiritual benefit from the pindaś and water (offered by him) and perpetuating the name and family of the adopter. In one of the latest cases on adop.

1257. वसन्त मन्त्रः । अद्वयेन पुत्रः कार्वाणं वा दत्तं वा दत्तं वदन्तः । दिग्भेदेऽपि कार्वाणो-  
र्नामसङ्कीर्तनाच्च ॥ दृष्ट. च. p. 2.



tion that revolutionized the law the Privy Council<sup>1258</sup> emphasize the peculiar religious significance that has attached to the son among all classes of Hindus, refer to the 9th chapter of Manu verses 106, 107, 137, 138 of which are instinct with this doctrine, hold that the foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the necessary rites and that in this doctrine the devolution of property, though recognized as the inherent right of the son, is altogether a secondary consideration.

*Persons who can give in adoption*—The primary right to give in adoption is that of the father, who can do so without consulting the mother.<sup>1259</sup> The mother cannot without the husband's permission give her son in adoption while the father is alive and capable of consenting. But the mother alone can (as said by Manu IX. 168, Yāj. II. 130) give her son in adoption if the father be dead or if he is incapable of giving consent or has entered the order of ascetics, provided he has not expressly or impliedly prohibited her to do so. If both parents are dead no one else, not even the paternal grand-father or the step-mother or a brother, can give a man in adoption. If A has a son B and is then given in adoption by his mother into another family, it was held in *Murland v. Narayan* that A still retained his power as father to give away B in adoption (1 L. R. 1939 Bom. 586 F. B.). This decision has been dissented from by the Nagpur High Court in *Sharadachandra v. Shantabai* (1 L. R. 1944 Nag. p. 544, F. B.). But the reasons given by the Nagpur High Court are not convincing and the judges seem to be influenced by the dictum of the P. C. that the adopted son is

1258. Vide *Amarendra Man Singh v. Sunatan* 60 I. A. p. 242. Though it may be conceded that in the majority of cases the object of the adopter is religious, the object of the giver and of the person adopted (if he is grown up) is far from religious. The main object of the latter two at least in modern times is to secure wealth without effort and hardly any religious motives enter into their minds. No one gives a son in adoption to a poor man, though a poor man has a soul to save as much as a rich man. Besides in adoption by widows, their motive is very often far from religious. They often adopt out of pique against their husband's brothers or nephews and for benefiting themselves monetarily by making agreements with the adopted sons to share the property with them.

1259. अत एव नाना विना वा वृक्षतामिति नृक्षता मातुर्भर्तृवृक्षतामापेक्षया नृक्षता सर्वप्रधानमनुरोधेन वा विदुर्महामते जनकतामात्मनोऽदुर्महोदयपथमभिव्यक्त्य पूर्वपुत्रास्तरता-दुर्गोत्तरमभिव्यक्त्य । वृक्ष. मी. pp. 119-121.

just like an aurasa son except in a few well defined cases. It cannot be supposed that the P. C. knew all the texts of the *nibanthas* dealing with adoption. Though the Bomhay High Court held in *Putalabai v. Mahadu* 33 Bom. 107 that a mother did not by her remarriage forfeit her right to give in adoption her son by the first husband, that decision was subsequently overruled in *Fakhrappa v. Saritrena* 23 Bom. L. R. 482 (F. B.) which decided that after remarriage a widow has no power to give in adoption her son by the first husband. The same High Court held in *Shamsing v. Shantabai* (25 Bom. 551) that a Hindu father, who, after the birth of a son, became a convert to the Moslem faith, did not by reason of his conversion lose his power of giving his son, who remained a Hindu, in adoption though the physical act of giving in adoption, being accompanied by religious ceremonies, may have to be delegated by him to a Hindu. This decision was based on the Caste Disabilities Removal Act of 1851 (for which see above p. 547, n. 1021). This decision is against the spirit of the ancient Hindu Law.

*What persons may adopt a son.*—Every male Hindu, who is of sound mind and has attained the age of discretion though he may be a minor according to the Indian Majority Act (III of 1875), can take a son in adoption provided he has no son, grandson or great-grandson, natural or adopted, living at the time of adoption. The word 'aputrena' in the verse of Atri (quoted above in n. 1231) is explained by the D. M. as meaning<sup>1260</sup> one who had no son at all or whose son is dead and as including the grandson and great-grandson. It would appear from a Bombay decision that even if a Hindu has a son, grandson or great-grandson disqualified from inheriting on the grounds mentioned above he cannot adopt (vide *Bharmappa v. Ujjayyanda* 46 Bom. 455). In the *Dattasiddhāntamāhātī* of Balakṛṣṇa (folio 11b) it is stated that if the aurasa son of a person is congenitally blind, dumb or deaf he can take a boy in adoption. In *Krishnaji v. Raghavendra* I L. R. (1942) Bom. 492 it has been held, relying upon 46 Bom. 455, that a widow

1260. अयुक्तोऽजातपुत्रो सुतपुत्रो वा । अयुक्तो सुतपुत्रो वा पुत्रार्थं सन्तुष्टोऽपि न—इति शौनकेत्याह । ... अयुक्तेन इति पुत्रपदं पौत्रपौत्रपौत्रपर्युपलक्षणम् । युक्तेन लोकान्वयवतिः (मनु ५. ११२) इति वाचादिना विनिर्दिष्टोक्तवतिपुत्रेण नानुपपन्नं लोकान्वयवतिपौत्रपर्युपलक्षणम् । वृत्त. मी. p. 3 and p. 18; अत्र पुत्रपदं पौत्रपौत्रपौत्रपर्युपलक्षणम् । तद्वारपि पित्रद्वारापुत्रवत्कल्याणविज्ञेयम् । वृत्त. च. p. 3; अत एव जन्मान्तरमूकवतिरपि पुत्रवत्तः पित्रद्वारापुत्रवत्कल्याणविज्ञेयम् । वृत्तविज्ञानमञ्जरी folio 11 b.



cannot adopt a son during the lifetime of her natural son who was a congenital idiot. The fact that a man is a bachelor or a widower or that his wife does not consent or that she is pregnant at the time of adoption does not prevent him from taking a son in adoption. In fact Vasistha provides for the birth of a son after a son is adopted (15. 9). It was said<sup>1261</sup> by Rudradhara and Vācaspati that as śūdras cannot perform *homa* with vedic mantras (required by Vas. quoted above on p. 663) śūdras cannot adopt a son. Others like Raghunandana, Nīlakantha, D.M. hold that a śūdra can adopt, as Śaunaka expressly allows him to do so and that the *homa* may be performed through a brāhmaṇa (as allowed by Parāśara VI. 63-64)<sup>1262</sup>. A wife cannot adopt during her husband's lifetime except with his express consent (as Vas. 15. 5 says).

After a man's death the only person that can adopt to him is his widow. It is as regards the power of the widow that the greatest divergence of views prevails. The basic text is that of Vas. 15. 5 (a woman should not give or take in adoption except with the assent of her husband). The resourcefulness and ingenuity of commentators, all deemed to be orthodox and all proficient in the Mīmāṃsā rules of interpretation, is illustrated nowhere better than in the interpretations of this text. Four interpretations are placed on this sūtra of Vasistha: (1) The D. M. and writers of Mithilā such as Vācaspati hold that a widow cannot adopt at all, because at the time of adoption it is impossible to have the consent of the husband (who is then dead) and because a woman cannot perform the *homa* with vedic mantras and cannot repeat the vedic passages about acceptance (which are required by Vasistha and Śaunaka); (2) In Bengal, Madras and Benares it is held that a widow may adopt under an authority from her husband given during his lifetime. The

1261. अपद्विषिक उक्ते वैदिकमन्त्रसाधनोमसि दृष्टव्येष्टे सूद्राणां अधिकार इति तदुपासम् । समन्वयकहोमस्तु येन विज्वारा कार्यः । उपकारो ह्येव होमहीनरानामुपपत्तिकम् । त्रिभिः सम्पादिते परव सम्पत्तं तत्फलम् ॥ इति पराशरयोक्तेः (२. २३-२४) । स्मात्तद्विनाशाय-  
प्येमेव । एव. मधुसू. p. 112. The courts hold that a śūdra can adopt.

1262. अनुप्रेमेति दुर्लभजनमात्रं स्त्रिया अधिकार इति यमते । अथ ह्यवसिष्ठः न स्त्री... भर्तुः । इति । अनेन विवाहाया भर्तुर्गुणानामभिसाधनधिकारो यमते । ... किं च ... होमकर्तृत्वे यद्विग्रहसिद्धेः स्त्रीणां होमानधिकारित्वात् परिग्रहानधिकारः—इति वाचस्पतिः । न च स्त्रीमन्त्रेण आचार्यवरप्रामाणात् तद्वज्जारा होमसिद्धिरिति वाच्यम् । होमसिद्ध्यापि यतिग्रहमन्त्रानधिकारेण यतिग्रहसिद्धेः । दु. मी. सू. 19 and 22-23; वल्. समन्वयकहोमस्य दृष्टव्येष्टेष्टाङ्ग-  
त्वात् स्याद्विनाशायप्येमेव । न च स्त्रीशूद्रयोरेवधिकारात्तदोद्वेकः इत्येव न भवत्येवेति द्रुति-  
विशेषे वदुर्ध्वलोके वाचस्पतिर्विशमम् । विमर्शसिन्धु III पृथगे p. 249.

idea is that the permission (*anujñāna*) of the husband is not required to be given just at the time of the adoption and that it may be given long before the actual adoption. (3) In Madras a widow may also adopt without<sup>1263</sup> her husband's authority, provided she secures the consent of the father-in-law or (if the latter be dead) of all the co-parceners of the husband, if her husband died as a member of a joint family, and if the husband was separate at the time of his death, then the consent of the father-in-law or (if he were dead) of a substantial majority of her husband's nearest sapindas. In this view the word 'of the husband' (in Vasistha) is taken as only illustrative and not literally. (4) The Vyavahāramayūkha,<sup>1264</sup> the Nirpayasindhu, the Samakārakaustubha, the Dharmasindhu, that are regarded as authoritative in Bombay and Western India, hold that the passage of Vasistha refers only to a wife whose husband is alive and that a widow may adopt without the husband's authority. According to this school the husband's authority to adopt is always to be presumed, unless he has prohibited his widow expressly or by necessary implication from adopting. The D. C. appeals to the general maxim 'another's (or the opponent's) view if not dissented from may be taken as having been approved'.

1263. In *Balsubramanya v. M. Subbaya* L. R. 65 I. A. 93 at p. 99 the Privy Council say: 'their Lordships are not laying down that the requisite authority must necessarily be express but they agree with the District Judge that in order to constitute an implied authority there must be circumstantial evidence of a cogent character'. Vide *The Collector of Madras v. Mootoo* 12 Moo. I. A. 397 pp. 435-36 where three of these four interpretations are pointed out.

1264. भर्तृहृत्ता तु सपत्न्या एव दृढार्थत्वात् । विधवाप्यस्तु तौ विनापि विदुस्तदभावे प्रातीनामाह्ता भवति । ... अतो परमामवसायां भर्तृहृत्ता याता सेवाधायुघ्ने न त्वपरां निर्धीयते । अतो विधवाया भर्तृराज्ञां विनाप्यधिकारः । स्व. मधुसू p. 113: तत्रैव नमिहः । न त्वेवैकं पुत्रं ... भर्तृरिति । इदं च भर्तृसम्बन्धे । अवस्था दृष्टान्तात्ता पिता वा सं स दुष्टो द्वितीया स्मृत इति परमस्यालप्यविरोधः स्यात् । दानं प्रतिग्रहापदभावात् । निर्णयसिन्धु III पुर्वार्धे p. 249: स्त्रियाम् तु जीवति भर्तृरिति तद्वत्त्वम् । येदिते पुत्रे वा तद्वत्तज्ञां विनापि । यथा नमिहः । 'न स्त्री ... भर्तुः । इति । अनुमतिव्यामर्शित्येव भवति । अयमितिपिदं परममनुमत्तं भवतीति व्याख्यात् । पुन. च. p. 15: तस्यावस्थितिकाम्यजनादिकर्मोचरणे इव पुत्रपतिमहं वि ना-पुत्रपण दोषोस्तीतिवादिनामाप्यागच्छादेव विधवाया अधिकारः । उक्तविधवाकर्मोचकारः पुंभि-रिति स्त्रीभिरपि संप्रदायिनिपयप्राप्तिर्वा कार्यः । उक्तवा वा दूतपुत्रा वा दूतार्थं सनुयोरप्य चेति शीनकीपयस्वरविशेषश्चत्तत्वात् । स्त्री. जी. p. 160. It will be noticed that the सं जी. reads कपरा वा दूतपुत्रा वा for अपुत्रो दूतपुत्रो वा in Śrinikṣa's text which is the reading of all other works, the former being probably a fabrication inserted to support widow's claims to adopt. The D. M. p. 3 notices the reading कपरो दूतपुत्रो वापि in Saonaka's text. For the maxim अयमितिपिदं &c. vide शाङ्करभाष्य on वेदान्तसूत्र II. 4. 12.



There is a large volume of case law about the construction of the authority to adopt, about the rights of co-widows in the matter of adoption, about the limits of a widow's power, which are deemed to be outside the purview of this work.

As regards the power of a widow to adopt in the Bombay school, when her husband was joint at the time of his death, the case law has fluctuated from time to time. Only a few cases may be referred to here. In *Ramji v. Ghamu* 6 Bom. 498 (F. B.) a Full Bench of the Bombay High Court held that a widow, whose husband was a member of a joint family at the time of his death, could not adopt when she has not the authority of her husband or the consent of the husband's undivided coparceners. After this decision had stood for 50 years the Privy Council held in *Bhimabai v. Gurusathgouda*<sup>1265</sup> L. R. 60 I. A. p. 25 that the Full Bench decision had already been overruled in *Yadav v. Namdeo* (48 I. A. 513) and that a Hindu widow can adopt without the consent of her husband's

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1265. In *Bhimabai's* case the Privy Council purport to follow the case of *Rakhmabai v. Radhubai* 5 Bom. H. C. R. (A. C. J.) p. 181. But in that case the husband was separate at the time of his death. The P. C. however point out that in *Yadav v. Namdeo* (48 I. A. 513 at p. 529) it was said that the decision in *Rakhmabai's* case was not based on the fact that the husband was separate at his death or on the fact that the widow when she made the adoption had the estate vested in her and it was held that that decision was equally applicable where the husband was joint. Apart from the fact that the decision of the P. C. is opposed to the general sentiment of Hindu society at present, with the greatest respect two criticisms have to be offered against the decision in *Bhimabai's* case. The passage of the *Vyavahāramayūkha* relied upon in *Rakhmabai's* case and in *Bhimabai's* case has not been correctly understood. The *Mayūkha* was combating the view of others that a widow cannot adopt at all. Therefore he tried to establish that a widow can adopt without her husband's authority. But the *Mayūkha* did not say expressly that she can adopt without any body's authority or that she can adopt even in a joint family without the consent of the coparceners or even against their wishes. On the contrary if we look at the whole context where he quotes Yāj. I. 83 and a verse of Kāt. (930) it would appear that he meant to convey that the consent of the father of the husband or of his kinsmen would be necessary. Further, no one drew the attention of the P. C. to another passage of the *V. Mayūkha* where it summarizes the rite of adoption and states 'Women whose husbands are alive are entitled to adopt with the permission of their husbands; failing the husband, a woman can adopt with the permission of the (husband's) father and the rest'; 'स्त्रीणां सपत्न्या भर्तृवृत्तया भर्तृनाम् विजादीनाम्' इय. मयूक p. 120.

co-parceners, when the husband was a member of a joint family at the time of his death. This decision was carried further by *Amarendra's* case (60 I. A. 242) by holding that when a widow, who had authority to adopt, adopted even after the estate had devolved on a male collateral heir such adopted son would take the estate and deprive the heir of it. As any widow was held to be able to adopt in Bombay without anybody's consent, hundreds of adoptions have taken place, which came and are coming before the courts. Another Full Bench case held that when a Hindu coparcenary came to an end on the death of the last surviving coparcener and the family property became vested in his heir, a subsequent adoption by the widow of a predeceased coparcener was valid, but it did not revive the coparcenary nor did it vest the property of the former coparcenary in the adopted son (*Balu v. Lahoo* I. L. R. 1937 Bom. 508). When a co-parcenary was broken up by partition among the members, it was held<sup>1266</sup> that the widow of a coparcener who died long before the partition cannot make a valid adoption and reliance was placed on a passage of the *Vīramitrodaya* (quoted below).<sup>1267</sup>

But these decisions have been dissented from in *Bajirao v. Ramkrishna* I. L. R. (1941) Nagpur 707 and in *K. R. Sankarlingam Pillai v. Veluchami Pillai* I. L. R. (1943) Mad. 309 (F. B.), where it has been laid down that when the surviving coparceners of a joint Hindu family were in possession of the joint family properties which they obtained in a partition among themselves after the death of a coparcener and subsequent to the partition a valid adoption was made to the deceased coparcener by his widow the adopted son was entitled to reopen the partition. They rely by way of analogy on the provisions of Yāj. that the posthumous son can reopen a partition already made and also on that of the disqualified heir when the disqualification is removed and on the dicta in some cases that an adoption dates back to the date of the death of the adoptive father. But no smṛti text and no digest has extended the exceptional rules about the posthumous son and the disqualified heir to a son

1266. Vide *Hirachand v. Soffal* I. L. R. 1939 Bom. 312 and *Irappa v. Rachayya* I. L. R. 1940 Bom. 42.

1267. अत्र ब्रूमः। पर्येकवृत्तिनि सम्पन्नादिनिष्ठास्वयानि स्वाम्यानि च तत्पत्न्येव। परस्पर-विभागान्ते परस्परस्वाम्यावद्दीयद्वये तानि नश्यन्ति। परस्परवर्णास्त्राज्यादिनेवेति च काव्यवृत्तयस्ति। अथवापननपीद्वये, अथवेकदेशे वत्पादनमित्येव वदेत्। अत एव विनाश-मात्रकल्पना न द्वे स्वाम्यस्वरोपादकत्वमा। अथ. अ. pp. 431-32.



adopted after partition. Their reasoning as regards the Bombay cases is not satisfactory. It amounts to this that as between the separating co-parceners the coparcenary may be extinct but as to the subsequently adopted son it exists i. e. a coparcenary is extinct and existing at the same time, which, to use no stronger expression, appears rather strange. Besides the general rule is that partition is made only once (Mam. IX, 47). The cases of the posthumous son and of the disqualified heir are expressly provided by way of exceptions. The usual rule is that exceptions are to be strictly limited to the matters expressly stated and are not to be extended by analogy to cases not covered by the words of the exception and that other cases are governed by the general rule. It is a canon of interpretation in Hindu Law that a special text forming an exception to a general text should be construed strictly and applied only to the cases clearly falling within it (*Gangu v. Chandrabhagabai* 32 Bom. 275, 283, *Hannant v. Ganesh* 43 Bom. 612, 624). Further, a Hindu widow is not compelled to adopt at any particular time; she may adopt at any time during her life. In *Raje Vyankatrao v. Jaywantrao* 4 Bom. H. C. R. (A. C. J.) 191 it is noticed that the widow in that case adopted 71 years after her husband's death. If the reasoning of the learned Judges of Nagpur and Madras is correct then when three or four generations have succeeded to the separating coparceners, an adopted son can reopen the partition after three quarters of a century. This result, to say the least, would be most unreasonable. The Nagpur High Court observes that every Hindu widow is a potential mother. This is a fiction which has been carried too far by that court and by the Privy Council. A woman in the order of nature can hardly ever have an *aurna* son beyond the age of fifty or so, but when a fiction is employed a woman can bring into existence a son even when she is 80 or 90. The Privy Council have approved of the Nagpur and Madras decisions recently in *Anant v. Shankar* 46 Bom. L. R. 1. They hold that a Hindu family cannot be brought to an end while it is possible in nature or law to add a male member to it or while there is still a potential mother if that mother in the way of nature or law brings in a new member. In *Ramchandra v. Shankar* 47 Bom. L. R. 121 (F. B.) the Privy Council decision in *Anant v. Shankar* has been followed and it is held that the decision in *Balu v. Lahoo* has been expressly overruled by the Privy Council. The consequences of these latest decisions will be most disastrous for Hindus. In *Amarendra's* case the P. C. state that there

must be some limit to the power of a widow to adopt or some conditions in which it would be contrary to the spirit of the doctrine to admit its continuance or inequitable in the face of other rights to allow it to take effect (L. R. 60 L. A. 242 at p. 249). In *Madana Mohana v. Purshottama* L. R. 45 L. A. 156 the P. C. approving of *Ramkrishna v. Shamray* 26 Bom. 526 (F. B.) held that, when a man dies leaving a widow and a son and that son dies leaving his own son or a widow to continue the line by adoption, the power of the former widow comes to an end and cannot be revived; that is, they were prepared to hold that the grandmother succeeding to her grandson who died unmarried could not make a valid adoption and allowed the grandfather and his ancestors to remain without the religious benefits that a son adopted by the grandmother would have conferred (in spite of the 9th chapter of Manu on which they rely in Amarendra's case). According to the recent rulings any widow whose husband died a member of a joint Hindu family may adopt at any time even when the other members become separate and may remain separate for 50 years or more and yet a large slice of the estate may be taken away after several generations have succeeded, laboured and acquired a vast estate. Further, it is not clear how far the P. C. will go in their solicitude for the adopted son. Suppose three brothers separate and one of them sells the property that came to his share. If the partition is to be opened for the benefit of a son subsequently adopted by a predeceased member's widow, will the purchaser be affected or not (supposing the sale is within 12 years of the adoption)? Supposing that the last surviving member of a family dies leaving a married daughter and a predeceased son's widow and the daughter inherits an absolute estate (as she does in Bombay) and remains in possession for 30 years, is it meant that a son thereafter adopted by the widowed daughter-in-law can divest an estate vested for thirty years in a married daughter who is not a member of the family at all after her marriage? The recent P. C. decision in *Anant v. Shankar* appears to indicate that whatever the length of time the adopted son will oust a collateral to whom the estate may have gone by inheritance. Intending purchasers have become afraid that there is no knowing how far the P. C. may go. These decisions will lead on to hurried sales of joint family property at whatever price may be fetched immediately a coparcener dies leaving a widow. The result of the several decisions of the P. C. has been that properties of



Hindu families in which widows of predeceased coparceners exist are not easily saleable and do not yield their proper market value. The inroads on the ancient joint family system of the Mitaksarā have been so many that only the shell remains; the burdens are there, but the soul is gone, what with the right of each coparcener to alienate his share for consideration, the Gains of learning Act, Act 18 of 1937, the decisions of the P. C. about adoption, sec. 39 of the Transfer of Property Act. It would be better if the Legislature declared that the joint family system of the Mitaksarā type has been abrogated, if all the innovations introduced by legislation and judicial decisions are to be kept intact.

A widow who has attained years of discretion may adopt although she is a minor according to the Indian Majority Act (of 1875). It has been held in Bengal that an unchaste<sup>1268</sup> widow cannot adopt, but in the Bombay Presidency it has been held that a *śūdra* widow, though unchaste, may make a valid adoption.<sup>1269</sup> If a man dies leaving a widow D and two sons A and B, who form a joint Hindu family, and subsequently A dies leaving a widow C and his brother B, and if B dies unmarried and the mother D succeeds as heir to her unmarried son B, she has still the power to adopt a son. The duty of continuing the line was cast upon both A and B and not on A alone and therefore when A dies that duty is cast on the surviving coparcener B. Therefore the proposition laid down in *Ramkrishna v. Shanwaro* cannot apply and the mother of B can adopt ( vide *Anant v. Dnyaneshwari* 46 Bom. L. R. 353 ).

#### Who may be adopted.

The person to be adopted must be a male according to the *Vyavahāramayūkha*<sup>1270</sup> which relies on the analogy of *upanayana* ( that only a male undergoes, as stated in the ancient text '*agtarvareṇa brūhmanam-upanayita* ). This has been followed by

1268. Vide *Sayamatal v. Sandamini* 3 Beag. L. R. 362.

1269. Vide *Basant v. Malleppa* 45 Bom. 459.

1270. दूतकस्य पुमानेव भवति न कन्या । स द्वेयो दूतियः सुतः ( मनु १. 35८ ) — इति सङ्गासंज्ञिसम्प्रदायप्रवक्तारमतौ स इति सर्वनाम्ना मातापितृकतुल्य-मीतिबलद्वयकारण-मितिकद्वानुसन्धौ भूतसमाधीवर्तुस एव—अथर्व-ब्राह्मणमुपनयति तमरचापयति—इति तस्य-द्वेवावयव—ब्राह्मणपर्युत्सोपनयनादिसंस्कृतस्यैव परामर्शात् । एव. मयूख pp. 108-109. For अथर्व-ब्राह्मणमुपनयति, vide आप. सू. IV. 10. 2 and सुवर्तनाचार्य's gloss thereon. The धर्मसिन्धु says: एवं दूतकस्यापि अपि स्वीकार उक्तमिदं कथं । तत्र परमोक्तोपकारादथैव विनाही नोपहृतवर्तने वाक्यम् । दूतकपरिचारे इतकस्यैव पितृपुत्र-भाविनी । ( III पूर्वार्धे p. 162 ).

the Indian Courts.<sup>1271</sup> But the D. M. (pp. 112-116), Sam. K. (p. 188) and *Dharmasindhu*<sup>1272</sup> relying upon such instances as that of *Santā*, the daughter of king *Dasaratha* (who was adopted by king *Lomapāda*) and of *Prithā*, who was the daughter of *Sūra* and was adopted by *Kuntibhoja*, say that even a girl may be adopted. *Pannalal* in 'Kumaun local customs' states that a girl may be adopted as a daughter in Kumaun by custom. The person to be adopted must be of the same caste as the adopting father. *Yāj.* II. 133, providing that the twelve kinds of sons that offer the *pinda* and take the wealth one after another in order, applies only to sons of the same caste. *Saunaka* also requires sameness of caste. *Manu* IX. 168 employs the word '*sadrām*', which was interpreted by *Medhātithi* as meaning 'similar to the adopter in qualities and not in caste'. *Medhātithi*<sup>1273</sup> expressly states that a *brāhmaṇa* may adopt a *ksatriya* boy. But *Kullūka* and the other commentators of *Manu*, the *V. Mayūkha* and other works hold that the boy must be of the same caste. The Sam. K. p. 150 and *Dharmasindhu* go a step further by saying that even a *brāhmaṇa* should adopt another of the same country. The *Vāyupurāṇa* (99. 137-139) narrates that *Bharata*, son of *Duṣyanta*, adopted *Bharadvāja*, son of *Bṛhaspati* and a *brāhmaṇa*, who then became a *ksatriya*.<sup>1274</sup> The courts accept the view of *Kullūka* and the rest. It is likely that courts may allow a boy from a subcaste of each of the four principal *varṇas* to be adopted by a man belonging to another subcaste of the same *varṇa*.<sup>1274a</sup> *Saunaka* and *Vṛddha-Yāj.* 4. by D. C. provide

1271. Vide *Gangubai v. Anant* 11 Bom. 690, where the *Vyavahāra-mayūkha* is expressly referred to and followed in preference to D. M. and *Saṃskṛtbrahmanubha*. Vide also *In re Munshiram* 11 Lahore 638 at p. 661.

1272. For the quotation from the स. कौ. vide H. of Dh. vol. I. p. 449 n. 1119. The D. M. adds passages from the स्कन्दपुराण, लिङ्गपुराण, हरिवंश and आदिपर्व. Vide आदिपर्व 111. 2-3 (cr. ed. chap. 104) for the adoption of कुली, and समापन, बालकाण्ड, 9th chap. for that of क्षात्रा.

1273. सद्वा न क्षात्रियः किं तर्हि कुलात्सर्वस्यैव । क्षत्रियादिरपि ब्राह्मणस्य पुत्रको पुत्रपते । मेधा. ०० मनु IX. 165. क्षियादीनां वर्णानां समानवर्णे एव । यद्यपि देशभेदेऽप्युक्त-वर्णस्वाश्रयादिनां समानत्वातीत एव । धर्मसिन्धु III पुनर्वर्ष p. 132.

1274. ब्रह्मणो दिव्यो भरद्वाजो ब्राह्मणाक्षत्रियोऽभवत् । द्विमुखाचमनात् स रघुलो द्विपुत्रस्तु मे ॥ वायु 99. 137. द्विमुखाचम seems to be a corrupt form of द्विमुखापन.

1274a. In *Raj Nandini v. Atwini Kumar* I. L. R. (1941) 1 Cal 457 the adoption of a *Valdya* child by a *Kṣayastha* was upheld to the Sylhet district, as both are now treated as *śūdras*.



that the *dattaka* may be of a different caste, but that such a son will not take the wealth.<sup>1275</sup> In spite of the words of Vas. 15, 3 and of Śaunaka (that one having an only son should not give him) the courts have held that even an only son may be given or taken in adoption and that the words of Vasistha are merely recommendatory. Vide *Sri Balusu Gurulingaswami v. Sri Balusu Ramalakshminamma* 26 I. A. p. 113 and *Vyas Chimantal v. Vyas Ramchandra* 24 Bom. 367 (F.B.). In connection with the force of the words of Vas. 15, 3-4 stating why an only son should not be given or taken, Jalmini's rule contained in what is called the 'hetuvan-nigadādhikarapa'<sup>1276</sup> (Jai. I. 2. 26-30) came in for very exhaustive discussion in *Beni Prasad v. Hardai Biji* 14 All. 67 (F.B.) and *Radha Mohun v. Hardai Biji* 26 I. A. pp. 113, 146. There are several Vedic passages like this, 'he offers the grains into the fire with a winnowing basket, for food is prepared with the help of it' (Tal. Br. I. 6, 5). The question is whether such sentences put forward a reason for what is enjoined in the preceding portion or whether they are intended merely as *arthavādis* (i. e. for the praise of what is stated in the preceding part of the passage). Jalmini concludes that they are for the purpose of praise<sup>1277</sup> alone.

1275. यदि स्वादुर्गजातीयो ददातीत्येति कृतः कश्चित् । अंशमानं न स कुप्योऽनिकरय मर्तं हि तत् ॥... यत्कामाह बुद्धयश्चैवत्यर्थः । सजातीयः सुतो ब्राह्मः पिच्छदाता न रिक्थमाह । तद्वशात् सविजातीयो वदनापकरोः स्मृतः । ब्राह्मणादनुमार्त्तं तन्मते स सविधिभ्यः ॥ इति । बृह. च. p. 7 ; दृष्ट. मी. quotes the verse यदि रघत् & as शौनक's (p. 104) and also as बुद्धयौतम's (p. 52).

1276. हेतुर्वा स्वादुर्गजातोपपत्तिः प्रायः । सुतिस्तु ब्रह्मदुर्गजादुर्गजा च तस्य । जै. I. 2. 26-27 ; अथ ये हेतुवच्छिगदाः श्रुतेन जुहोति तेन ब्राह्मं जित्यत इत्येवमादुर्गजास्तु मन्वेहः । किं सुतित्वेनो कार्यमुत हेतुरिति । किं प्रायम् । हेतुः स्वादुर्गजात्वं होतरव । अथ, इदं ये हेतुवच्छिगदान्ते हिंसन्दिभिर्न च परमाणोऽवस्ते नृदाहरणम् । अन्वार्थिकः ।

1277. Nigada means 'a sentence or sacrificial formula' and 'hetuvat' means 'containing a word or words (like 'hi') which are generally used to indicate a reason for a statement already made. In preparing food from grains, the śūrpa is required for winnowing them to free them from husk &c., as also are required the pan or pot for boiling the grains and a ladle for stirring the grains when they are being boiled. The *Śruti* passage provides that with the help of a śūrpa the homa is made of Karambhāpātras (pots full of husked grains of yava slightly fried on the Dakṣiṇa fire, ground and mixed with curds) in the Varuṇapraghāsa, one of the *cāturmāsya*s. Vide H. of Dh. vol. II. pp. 1095-96 and 1098 for the śūrpa used as a *juhū* ladle. If the latter part of the passage contains a reason for the first part, then it would follow that the pot or ladle (both of which are useful in getting food

(Continued on the next page)

The eldest son also should not be taken in adoption; since, as the Mit. (on Yaj. II, 130) puts it, it is the eldest son alone who is the foremost in serving the purposes of a son as regards his genitive father acc. to Manu IX. 106 which says 'a man becomes one having a son (a father) by the mere fact of the birth of his (first) son and becomes free from the debt owed to

(Continued from the last page)

prepared) may equally be used instead of the śūrpa. But the object of the latter half is not to assign a reason, but rather to praise and recommend the śūrpa as the means of making the homa and so nothing but the śūrpa can be employed in making the offering. The Veda is the final authority in all matters pertaining to sacrifice, it does not stand in need of giving reasons for its prescriptions but it may eulogise an act to induce people to perform it. Therefore in the *hetuman-nigadādhikaraṇa* Jaimini does not lay down (as thought by Mandlik and by the High Court in 14 All. 67, pp. 73, 84, 125) that when a text is supported by a clause containing words of reason, it should be regarded as merely recommendatory (and not obligatory), but what Jaimini lays down is that clauses containing words generally meaning 'reason' are to be construed as *arthavādas* (praises) of the obligatory rule contained in a previous clause. Mr. Mandlik says (p. 499 of his 'Hindu Law') 'It is a rule of the *Pūrvamīmāṃsā* that all texts supported by the assigning of a reason are to be deemed not as *vidhi* but simply as *arthavāda* (recommendatory)'. When a text is treated as an *arthavāda* it follows that it has no obligatory force whatever. Śābara-mīmāṃsā constructs an *adhikaraṇa* on this head which he calls '*hetuman-nigadādhikaraṇa*' (quoted in 14 All. 67 at p. 73). This is entirely wrong as shown above and the *adhikaraṇa* is not called 'hetuman etc.' but 'hetuman etc.'. Acc. to Jaimini's rule the words of Vss. 15. 3 'naikam putram' contain a *vidhi* (an obligatory rule), while the following clause containing the word 'hi' (indicative of a reason) 'as hi santānāya pūrvavat' is merely an *arthavāda*, which praises the *vidhi* by emphasizing the importance of a son. Sarkar in his 'Mīmāṃsā Rules' (pp. 175-176) correctly represents the meaning of Jaimini, though in somewhat obscure language. The decisions in 14 All. 67 and 26 L. A. 113 are correct so far as the Mit. and the Mayūkhā are concerned, though the judgments in the former case are wrong in what is regarded to be the meaning of Jaimini's aphorisms constituting '*hetuman-nigadādhikaraṇa*'. The Privy Council in 26 L. A. 113 at p. 146 refer to the supposed rule of Jaimini that all precepts supported by the assignment of a reason are to be taken as recommendations only, but they express themselves guardedly and say that the rule is rather startling and they would not admit it to be true unless they made an intimate study of the smṛtis. The commentaries will make the *Pūrvamīmāṃsā* position clear. असम्यक् पुनः कुर्ये स्मरते । तेन कञ्चै लिखत इति हुतान्तात्वावधानं न च हुतान्ताज्ञापनाय किं तर्हि वरीच्यनावेन । तस्माद्धेतुवन्निगद-रथापि स्तुतिरेव कार्यमिति । शबर on ऊ. I. 2. 30. The शास्त्रदीपिका states 'न च वेदेनोपपन्नम् द्युत्येव होमसाधनत्वं हेतुमपेक्षते वेदुरपेक्षे तत्र प्रमाणत्वम् । अर्थवादस्त्वपेक्षितः प्ररोचनार्थमेव । तस्मादर्थवादत्वम् ॥'.



the *pitra*'. But in modern times this rule is taken to be only recommendatory and the adoption of the eldest son is held valid as also that of an only son<sup>1278</sup>. The V. Mayūkha (p. 108) states: acc. to the Mit. the prohibition to give the eldest son affects only the giver but not the adopter and he criticizes the Mit. that Manu IX. 106 does not forbid the giving of the eldest son, but only provides that by the birth of the first son a man becomes free from debt (to *pitra*). So the V. Mayūkha goes a step further and holds that there is no prohibition at all either to give or take in adoption the eldest son, while the Mit., though it does not hold the adoption bad, seems to hold that the giver incurred blame. The Sām. K. p. 150 also does not allow the adoption of the eldest son. Two or more persons cannot adopt the same boy and if they do so the adoption by each is invalid<sup>1279</sup>. The Dvyāmugyāyaya adoption, to be described later on, is an exception.

The texts contain rules about preference in selecting a boy for adoption, when several are eligible. The Mit.<sup>1280</sup> on Yaj. II. 132 declares that the verse of Manu IX. 182 stating that 'when out of several brothers who are sons of the same father one has a son all of them become through that son persons having a son' does not provide that he becomes really the son of all but it indicates that when a brother's son is available

1278. Vide *Kashibai v. Tatla* 7 Bom. 321, *Tukaram v. Bahaji* 1 Bom. L. R. 141 (for valid adoption of eldest son), where at p. 152 the following passage from the Mayūkha is referred to: उपेत्येन जातमात्रेण पुत्रीनरतिमानस इति उपेत्येन पुत्रकार्यकरणे मुख्यत्वात् न द्वेष इत्यप्यपि निवेद्यो द्यापुरे न सतिग्रही-तुरित्यपि सः । इत्याद्यं प्रतिषेधो द्यापुरेण यथेतत् उपेत्यदाननिषेधकता स्यात् । न तु सान्ति । मानाभावात् । पुत्रीनरतिमानस पुत्रियमात्राया कयापाकरणोक्तिमात्रपरत्वात् । अत एव पित्रुणामन्येष्वपि स तस्मात्सर्वमर्हति—इत्युक्तार्थं सङ्गच्छते । एष. मयूख p. 103. The same passage of the Mayūkha is referred to in *Vyas Chimanlal v. Vyas Ramchandra* 24 Bom. 367 (F. B.) at p. 373.

1279. अपुत्रेष्वेकैकपुत्रपरत्वात् न द्वार्या विभिर्वा एकः पुत्रः कृतव्य इति गम्यते । दृष्ट. मी. p. 25.

1280. वस्तु-आवृणामेकजातानामेकधन्युवरागमेत् । सर्वे ते तेन पुत्रेण पुत्रियो मसुर-जनीत्—इति (मनु १. 1०२) तदपि आवृणवस्य पुत्रीकरणसम्बन्धेऽप्येव पुत्रीकरणनिषेधादेः, न पुनः पुत्रत्वप्रतिपादनाय तदुक्ता शोकाया वस्तुरित्यनेन शेषोपात् । मिता, on स. II. 132. The same verse is वसिष्ठ 17. 10 (with variations). एष. नि. p. 140 quotes similar verses of हारीत and बृहस्पति. Compare विष्णुध. सू. 15. 42 also. 'आश्वलायनी पुत्रवशोक्तिरान्यत्र ताव हस्तिनापुरसमर्थाया । वस्तु संवदकारेणोक्तं यथेकजातायावो आतरस्तु सर्वोदाराः । एकरवापि हस्ते जाते सर्वे ते पुत्रिनो मृताः—इति तस्य ... देव-श्रवणिना तात्पर्यार्थं उक्तः—उभयत्रापि तावः सतिनिधिः कार्य इति ग्रन्थेन । स्मृतिच. II. p. 289. Vide स. नि. p. 395 for quotation of this passage of स्मृतिच.

for adoption another boy should not be adopted. A similar explanation had been given by an ancient commentator Deva-svāmin. The D. M., D. C. (pp. 5-6) and Sam. K. p. 150 quote passages of Śaunaka<sup>1281</sup> and Śākala that a man should prefer a sapinda or a sagotra to one who is not a sapinda or of the same gotra. The D. M., D. C., the Sam. K. p. 150, the Dharma-sindhu recommend the following order: the full brother's son, then a sagotra sapinda, then a sapinda though not of the same gotra (such as a boy from one's maternal uncle's line or a paternal aunt's descendant), then one not a sapinda though of the same gotra, then one who is neither a sapinda nor a sagotra. This order is purely recommendatory and an adoption in breach of it is quite valid. It has been recently held that an adoption is invalid if the boy adopted be congenitally and incurably deaf and dumb though not an idiot. Vide *Surendra v. Bholanath* I. L. R. (1944) 1 Cal. 139.

As to the age of the boy to be adopted there is great divergence among the medieval writers which is also reflected in the case law. In this connection certain verses of the Kālikāpurāṇa assume<sup>1282</sup> great importance. The V. Mayūkha and the D. C.

1281. जाड्यानां सपिण्डेषु कर्त्तव्यं पुत्रसंहरः । तदनापि सपिण्डो वा अप्यत्र तु न कारयेत् ॥ सीमकः सपिण्यापत्यके चैव सपिण्डजनभावि वा । अनुक्तो हि नो परमातुवत्त्वे परिकल्पयेत् । समानमोज्ज्वलमिव पातयेद्वनमोज्ज्वलम् । आकलः, both q. by दृष्ट. मी. p. 41 and 48, and दृष्ट. च. pp. 5-6. A comparatively late work called अमर-पिण्डासमोदपुत्रपरिग्रहपरिचय (composed after about 1700 A. D., since it mentions the दत्तकमीमांसा and संस्कारकौस्तुभ) after an elaborate discussion of Rg. VII. 4. 7-8 and the above passages of Śaunaka and Śākala states the following conclusion (D. C. College Ms. No. 133 of 1886-92 folio 16 b) 'यथा ... द्वापिण्डावैः समर्पितं मातुलकन्यापरिणयम् ... इवा अमरपिण्डासमोदपरिग्रहोपि वरिष्ठः देशे येषां कुलजनविसिद्धसंस्थानेव मातृवैवात्म्येति व्यवतिष्ठे'.

1282. पितृमर्दिनं च, पुत्रः संस्कृतः द्विर्वीर्यते । आचूडानं न पुत्रः स पुत्रतां प्राप्ति चारयतः ॥ चूडोपनयनसंस्कारा निजगोत्रेण न कृताः । द्वापिण्डासमोदपुत्रपरिग्रहोपि वरिष्ठः । ऊर्ध्वं तु पञ्चमाह्वानं दत्तकपुत्रः कृता इव । गृहीता पञ्चवर्षीयं पुत्रेति ग्रथम् अत्रेत् ॥ सप्ततिका-पुराण q. by दृष्ट. मी. p. 122, नि. सि. III पूर्वार्धे p. 250, स्प. मयूख p. 114, दृष्ट. च. pp. 31-33 (reads यदि स्वाकुलसंस्कारो यदि वारीतशेषः ग्रथे पञ्चमाह्वानं पुत्रेति), सं. की. p. 169 (reads चूडाया यदि and अत्रेत् अत्रासं). The cūḍā was usually performed in the third year and the locks that were kept on the boy's head depended upon the number of the *pravaras* ages of the gotra of the father. Vide H. of Dh. vol. II, pp. 260-265 for cūḍākaraṇa. So if a boy (who was असमोद) was adopted after cūḍā, his position would be this that some संस्कारा would have been performed with one gotra, while others would be performed with another gotra i. e. he would thus belong to two gotras. To prevent this and to complete his affiliation into the adoptive family the *putresṭhi* had to be performed.



hold that the passage is of doubtful authenticity (as the verses are not found in several mss.), while the D. M. and the Nirṇaya-siṃdhu hold them to be genuine and the Sañ. K. pp. (169-172) after referring to these views states that those verses are opposed to what is stated in the Ait. Br. about Śunahsepa who was adopted by Viśvāmitra as a son even after upanayana. The verses are: 'O King! that son, whose *samśkāras* up to (including) the *cūḍā* (tonsure) ceremony are performed with the gotra of his (natural) father, does not (i. e. cannot) attain the status of the adopted son of another. When the ceremonies of *cūḍā* and upanayana are performed under his own gotra (by the adoptive father) the *dattaka* and the other kinds become (recognised as) sons (in the adoptive family); otherwise they are called *dāsa* (slave). After the fifth year the adopted son and the rest cannot be (recognised as) sons. Having taken one who is five years old, one (the adopter) should first perform the *putreṣṭi*'. These verses state four propositions: (1) If all *samśkāras* from *jātakarma* to *cūḍā* (i. e. including it) have been performed in the family of birth that boy cannot be adopted in another family; (2) if a boy's *cūḍā* and other later ceremonies are performed in the family of adoption he is fully an adopted son; (3) a boy over five years of age cannot be adopted at all; (4) a boy whose *cūḍā* has been performed in the family of birth may be adopted up to five years, provided the rite called *putreṣṭi*<sup>1283</sup> is first performed in the adoptive family before any other ceremony is performed on the adopted boy. The D. M. says that the best time for adoption is up to three years, then from three years to five is the next best (*ganṇa*) and that after five no boy can be adopted. The D. C. (p. 36) holds that a boy of the three higher classes can be adopted up to *upanayana* and that a śūdra boy can be adopted till his marriage. The Nirṇaya-siṃdhu seems to be of the same opinion. The V. Mayukha<sup>1284</sup>

1283. About the पुत्रेष्टि, the दृक्. मी. p. 132 says 'अग्रे पुत्रेष्टे दुरोवासान्धः कपालं निवेपयित्वा पुत्रेष्टे दुरोवासान्धो वृद्धकपालं मज्जाकामः । अग्निं वासं यजो मज्जनपतिं वृद्धमिन्द्रः मरुच्छतीति वासं मज्जाकलकलमिन्द्रः श्रुत्वा । तत्र चातुर्वर्त्ता मज्जा तत्र तदुत्पत्तिरेव भाषा तत्र तुलका परिश्रुते तत्रोत्पत्तिरेकानावासरतः मज्जात्मैव भाष्यमिति कल्पते प्रकृत-निर्गमपात्रपक्षेः ।' The सं. कौ. p. 173 contains the words अग्रे ... मरुच्छतीति. Vide आनन्द. मी. II. 30 'पुत्रकामेष्टवामग्निः पुत्री.''

1284. दृक्कथं परिणीत उत्पन्नपुत्राणि च भवन्तीति तत्राचरणाः । पुत्रं चेद् वापका-भवात्, म्य. म. p. 114. When Nīlakaṇṭha says that the three verses of the Kālikāpurāṇa refer to the adoption of an asagotra boy, that is not his real opinion; he only concedes that that passage may, if at all, refer to the adoption of an asagotra boy, एवं च पुत्राणां इत्यतद्वृत्तमभिज्ञानमद्वैतीशिवो द्वितीयोनामुपपन्नमिति: अत्राप्यपि पुत्राणां द्वितीयः । दृक्. च. p. 36.

and Sam. K. both hold that even a boy not of the same gotra may be taken in adoption after upanayana or after marriage and even when the person to be adopted has himself had a son. In Bengal, Benares<sup>1285</sup> and Bihar the courts hold that the boy must be adopted before *upanayana*. The same rule holds good in Madras<sup>1286</sup>; but there it is further held that if the boy to be adopted is of the same gotra as the adopter, the adoption may be made after upanayana but before marriage. In Bombay a person may be adopted at any age, even after marriage and even after he has had children and he may be even older than the adopter.<sup>1287</sup> In the whole of India, a śūdra may be adopted only before his marriage, but in the Bombay Presidency the adoption of a married man and of one having even a child is allowed also among śūdras<sup>1288</sup>.

1285. *Vide Ganga Sahai v. Lekhnaj* 9 All. 253 (at p. 306 the translations of the Kālikāpurāṇa verses by Sutherland and Colebrooke are quoted and at p. 315 the authenticity of those verses is held to be extremely doubtful); *Raja Mukund v. Jagannath* 2 Patna 469, 477 (where the passage of the Kālikāpurāṇa is quoted), in which it was held that a boy may be adopted till upanayana and that it does not matter if the cūḍā ceremony is performed in the family of birth and the putroṣṭi is omitted at the time of adoption; *Chandreshwar v. Bisheshwar* 5 Patna 777 at p. 844 (where the passage as to five years was held not binding); vide *Surabato Devi v. Sudhir Kumar* AIR (1944) Cal. 265.

1286. *Viraragava v. Ramalinga* 9 Mad. 146 (F. B.) for the validity of the adoption of a son after upanayana and *Pichayayyan v. Subbayyan* 13 Mad. 128 for the invalidity of a married man's adoption.

1287. *Vide Dharma v. Ramkrishna* 10 Bom. 80, 84 (where it is said that though Nīlakṣṇa's explanation that the Kālikāpurāṇa verses refer to an asgotra causes a difficulty, yet it does not follow that he adopts that interpretation as his own) in which the adoption of a married asgotra brāhmaṇa was upheld; *Kalgarda v. Somappa* 33 Bom. 669 where the adoption of a married man having a son was upheld, but it was decided that the son born before adoption remained for purposes of inheritance in the natural family; *Balabai v. Mahadu* 48 Bom. 387 (where the adopted man was older than the adopter).

1288. *Lingayya v. Chengalammal* 48 Mad. 407 where it was held that even a śūdra cannot be adopted after his marriage, (which decision follows the D. C.)



Saunaka required that the boy to be adopted must be *putracchāyānna*<sup>1289</sup> (one who bears resemblance to or is a reflection of the *aurasa* son). This has led to differing explanations by the commentators and contradictory decisions in the several Indian High Courts. The D. M. and D. C. ( p. 21 ) both explain that the resemblance consists in the possibility of being procreated by the adopter himself by *niyoga* and the like. The meaning of the D. M. is: A brother's son or a sapinda's son or a sagotra's son can be adopted because the adopter could have procreated a son by the practice of *niyoga* on the wife of a brother or a sapinda or a sagotra ( according to the rules of *niyoga* ); but he could not have done so as regards his mother, or grandmother, daughter or sister or his mother's sister. Therefore a man cannot adopt his own brother, paternal or maternal uncle, a daughter's son or a sister's son and the like. One strange thing is that, though *niyoga* had been forbidden for many centuries before the D. M., the author of it brings in the rules of the long obsolete practice of *niyoga*<sup>1290</sup> to find out who could or could not be adopted. But stranger things were to happen. Sutherland who translated both the D.M. and the D.C. explained in his notes the word '*niyogādīnā*' as ' by such an appointment or marriage and the like '. Vide Stoke's Hindu Law Texts p. 590 ( Dattakamīnāmsa, sec. V. *placitum* 16 note ). There was no warrant for introducing the word ' marriage ' after ' *niyoga* '. The rules of *niyoga* are different from those of marriage. The judges most of whom were generally ignorant of Sanskrit and had yet to decide cases among Hindus according to Hindu Law as understood by them ( vide 26 I. A. 113 at page 128 about the ignorance of Sanskrit among judges ) seized upon this explanation and evolved the curious rule that no one could be adopted whose mother the adopter could not have married in her maiden state ( i. e. the relationship has reference to a time prior to

1289. पुत्रच्छाया पुत्रसादृश्यं तत्र निरोमादिना स्वपुत्रस्याद्वयं पत्न्यं तथा आनुसंगि-  
कसम्बन्धोपादेयत्वं । न चासम्बन्धिनो निरोमासम्भवः । श्रीनारदः ब्राह्मणः कश्चिद्वैतनोपादि-  
मन्वयतामिति स्मरणात् । अथ आनुसंगिगुणमातुलदीक्षितभामिनेपादीनां निरासः पुत्रसा-  
दृश्याभावात् । ... तथा षड्विंशतिविधसम्बन्धपुत्रो वर्जनीय इति । एतौ रतिरोक्तः सम्बन्धो  
सादृश्यं कार्य इति यावत् । दत्त. नी. pp. 144-145 and p. 147. The words  
पुत्रच्छाया ... योग्यत्वं occur in दत्त. च. also ( p. 21 ). The half verse श्रीनारदः  
... सप्तपदात् is almost like आदिपर्व 105, 3.

1290. For the rules of *niyoga* vide H. of Dh. vol. II. pp. 392-601.

marriage). This is still the law in all Presidencies<sup>1291</sup> except Bombay. Although the D. M. stated that the boy to be adopted must be capable of being procreated by niyoga, at another place it remarks, after quoting verses of Śaunaka<sup>1292</sup> and Śākala, that a boy of another gotra may be adopted except a daughter's son, a sister's son and a mother's sister's son. The Bombay High Court holds that any one may be adopted except these three (vide *Ramchandra v. Gopal* 32 Bom. 619, *Walhai v. Heerbai* 34 Bom. 491 holding that a man cannot adopt his mother's sister's son, *Ramkrishna v. Chintaji* 15 Bom. L. R. 824 holding the adoption of father's sister's son valid). Very strange results have followed from this viz. the Bombay High Court has upheld the validity of the adoption as a son by a man of his own half-brother (vide *Gajanan v. Kashinath* 39 Bom. 410), of his own maternal uncle's son, and the adoption by a widow of her deceased husband's son-in-law (vide *Sitabai v. Parvatibai* 47 Bom. 35). It should be noted that the Dvaitanirṇaya or Dharmadvaitanirṇaya<sup>1293</sup> (of Śaṅkarabhaṭṭa, father of Nīlakaṇṭha) and the V. Mayūkhā both hold after a very abstruse reasoning based on several Mīmāṃsā rules, that men of the three higher classes may

1291. Vide *Minakshi v. Ramanada* 11 Mad. 49 (F. B.), *Bhagwan Singh v. Bhagwan Singh* L. R. 26 I. A. 153, 160, in the latter of which the texts of Śaunaka and Śākala are relied upon.

1292. तथा च शौनकः । ... दौहित्रो भगिनेयश्च शूद्रश्च कृत्रिते सुतः । ब्राह्मणादि-  
त्रये नस्ति भगिनेयः सुतः कश्चित् । ... तदेतत्पट्टनाचये शाकलः । समानर्थावभावे पात-  
देव्यर्थावयवम् । दौहित्रं भगिनेये च मातुस्तत्सुतं विना । इति । एतेन भगिनेयपदं दौहित्र-  
मातुस्तद्वयोदयलक्षणमिति स्पष्टमेव सिद्धम् । पुनर्न चतुः, विवदसम्भवात् विजयि  
समानतात् । दत्त. मी. pp. 80 and 101, दत्त. च. p. 8; दत्त. च. p. 6 quotes शाकल's  
verse. The दत्त. मी. elsewhere (p. 98) and the सं. की. p. 158 read शूद्रार्था  
विहितः सुतः and the सं. की. p. 176 reads 'दौहित्रं भगिनेये वा शूद्रार्था चापि वापयेत्,'  
while the धर्मनिरुक्तम् (p. 103) and the च. मयूख p. 110 read दौहित्रो भगिनेयश्च  
शूद्राद्यापि च कीर्त्ते. इदमोक्तम् q. by the दत्त. मी. p. 146 reads 'ब्राह्मणादित्रये नस्ति  
भगिनेयः सुतः कश्चित्' ।

1293. Vide the text of the V. Mayūkhā p. 111 and notes pp. 173-179  
in my edition of the V. Mayūkhā for explanation. The Dvaitanirṇaya  
(p. 103) concludes: 'नेन ब्राह्मणादिभिरपि दौहित्रभगिनेयो युवत्वेन ब्राह्मण्यमिति सिद्धम् ।  
तथा शूद्रेन सति सम्भवे दौहित्रभगिनेयावेव ब्राह्म्यौ.' The V. Mayūkhā p. 111 follows  
the Dvaitanirṇaya and states that usage is in accordance with its explana-  
tion: 'निवृत्तं चेत्तद् द्वैतनिरुक्ते वातचरमेऽस्मिन्नाचारोपपेक्ष' । In *Gopal v. Hanmant*  
3 Bom. 273 at p. 280 it was held that Nīlakaṇṭha also interdicted the  
adoption of the daughter's son and of the other two by the regenerate  
classes. It is submitted that this view as to the position of the V.  
Mayūkhā on this point is entirely wrong.



adopt a daughter's son, a sister's son or a mother's sister's son and that a śūdra must adopt one of these if available in preference to any one else. The Bombay High Court follows the interpretation of Śaunaka's verse given by Nandapandita in preference to Nilakantha's, but in its turn disregards the authority of Nandapandita who forbade the adoption of a brother or uncle. It would have been far better if it had generally brushed aside everywhere the dicta of Nandapandita and preferred the interpretation of the Mayūkha. Popular sentiment is in favour of the daughter's son or sister's son being adopted, as they are the nearest and often the dearest relations; and yet the High Court shuts the door against them, while it opens it ajar for the adoption of a brother or maternal uncle or his son or one's own daughter's husband, which appears absurd to people. Besides the High Courts have recognised the adoption even of a daughter's son<sup>1294</sup> on the ground of custom by Deśastha smārta brāhmanas in the Dharwar District (vide *Sundrabai v. Hanmant* 56 Bom. 298), by Telugu brāhmanas (*Vinayakundara v. Somasundara* 43 Mad. 876). Śūdras can adopt a daughter's or sister's or mother's sister's son all over India. The D. M. went so far as to say that a widow could not adopt her brother's son.<sup>1295</sup> The D. M. ignored the fact that the widow adopts to her husband (and not to herself) who bore no relation to his wife's brother's wife and who could have himself adopted that son. The Bombay High Court and the Privy Council have discarded this absurd proposition of the D. M. Pannalal in 'Kumaun Local customs'

1294. It may be noted that the question of the adoption of the daughter's son cropped up even in the times of the Peshwas. In 'Selections from Peshwa's Records' vol. 43 No. 146 pp. 116-117 the opinion of Rāmsūtri, the Chief Justice of the Peshwa's court, is sought on the adoption of a daughter's son from the Raigarh District. The Pṛthivīrāja Rāmu states that the famous Chohan hero Pṛthivīrāja had been adopted by his maternal grand-father Anahapāla of the Tomara dynasty of Delhi. But modern historians say that this is imaginary (vide 'History of Medieval India' by Prof. Ishwari Prasad p. 9 n.).

1295. उदय इन्द्रगीतम् । माद्वजादिद्वये नास्ति नागिनैः सुतः कश्चिन् । इति । नागिनैश्चर्द्धं मातुःपुत्रादुपलक्षणम् । तेन नागिन्या मातुःपुत्रो न प्राप्यः । इत्थं. मी. pp. 36-37. Vide *Bai Nani v. Chavilal* 22 Bom. 973, *Pattulal v. Parbati* 42 I. A. p. 135, where after admitting that the Dattakamīmāṃsā is embedded in law, the P. C. say that caution is required in accepting the glosses of Nanda Pandita where they deviate from or add to the smṛtis (p. 163).





the smṛtis as applicable to all such sons as the dattaka, kṛita<sup>1298</sup>. The V. Mayūkha quotes a prose passage from Kātyāyana (which is attributed to Pāṭhinaśi in D. C.) and the V. Mayūkha, D. M. and D. C. all quote a verse (which is ascribed to Pravarādhyāya by the first and to Pārijāta by the D. M.) that supports this. The D. M. and D. C. both quote two sūtras of Satyāsādhā and Śābara's gloss (*bhāṣya*) thereon in which the *kṣetrāja* is called *nitya dvyāmuṣyāyana* and the dattaka and others are called *anītya dvyāmuṣyāyana*. Yāj. II. 127 and Baud. Dh. S. II. 2, 21 provide that a *kṣetrāja* is the son of both the beggetter and of the husband of the wife on whom the son is procreated. Therefore such a son is called *nitya dvyāmuṣyāyana* (because he is always the son of two fathers). When the *kṣetrāja* became obsolete and forbidden, the only *dvyāmuṣyāyana* was an only son taken in adoption with a stipulation as described above. About the dattaka Manu IX. 143 states the general rule that the dattaka loses the gotra of his genetive father and assumes that of the adopter. But a dattaka belonged to two gotras according to some, if his *saṁskāras* up to *caula* were performed in his natural family and the *saṁskāra* of upanayana and those that follow were performed in the adoptive family. Therefore it was not a general proposition that a dattaka always belonged to two gotras. If all the *saṁskāras* from *jātakarma* were performed by the adopter, then the dattaka would take the gotra of the adopter alone. Hence the sons called dattaka and 'the bought' were styled *anītya dvyāmuṣyāyana*s (who were not in all cases *dvyāmuṣyāyana*s). The D. M. states this<sup>1299</sup> twofold division of *dvyāmuṣyāyana*s and employs the words *nityavat* or *nitya* and *anītyavat* or *anītya*

1298. पशु-अथ वेदसककालपुत्रिकापुत्राः परममित्रेणानादेषात्ते इत्यामुस्थापना भवन्ति—इति इत्यामुस्थापनामुपक्रम्य कार्यापना । न्य. मयूख p. 115; दृष्ट. च. p. 46 ascribes this to पैठिनाशि and reads; अथ दत्तककालपुत्रिमपुत्रि ... .. घटेणानादेष येन जातारोऽसद्वत्कुलोना इत्यामुस्थापना भवन्तीति । इत्यामुस्थापनाया वे स्पृष्टसककालिकाया । गोत्रवेपथुहाता सोऽप्यशिरयोर्धया । q. from अथारण्य by न्य. मयूख p. 118.

1299. द्विभिदा दत्तकादयो निरवयव इत्यामुस्थापना अनिरवयव इत्यामुस्थापनाय । अथ निरवयव इत्यामुस्थापना मान वे जनकपतिवहीतुभ्यामावयोरर्थं पुत्र इति संनितपञ्चत । अनिरवयव इत्यामुस्थापनासु ये च्छान्तीः संस्कारैर्जनकैर्न संस्कृत उपनयनादिभिश्च न वेदधीना । तेषां गोत्रहरेणापि संस्कृतत्वाद् इत्यामुस्थापनात् परत्वमित्यम् । जातमात्ररथे परित्यजे गोत्र-हरेण संस्काराभावात् तस्य प्रतिवहीतुर्गोत्रमेव । तद्विद् सर्वसमिधोवाह सरवाचाह । 'निदानं इत्यामुस्थापनात् इवेः' इति सूत्रेण निरवयव इत्यामुस्थापनानां गोत्रहरे परस्मन्त्वन्मुमुक्षा तमेवमित्येवमप्यद्विजति । 'दत्तकार्दीनां तु इत्यामुस्थापनत्' इति सूत्रेण । इत्य. मी. pp. 188-89; vidē दृष्ट. च. p. 44 for the सूत्र of सरवाचाह.

to denote the two varieties and restricts the former only to a son adopted with a stipulation as stated above. The *kṣetraja* became quite obsolete many centuries ago and the courts have held that the *anṭya dvayāmusyāyana* is also now obsolete.<sup>1300</sup> It is now held that every adoption is presumed to be in the simple (*kr̥śala*) form, unless a stipulation that the boy will be the son of both is proved (when it will be a *dvayāmusyāyana* adoption).

When a man is adopted in the *dvayāmusyāyana* form, his son born after such adoption has been held to inherit as grandson to the adoptive father, if the *dvayāmusyāyana* son died before the adoptive father.<sup>1301</sup>

*Ceremonies of Adoption.*—The most essential ingredient in adoption is the giving of the boy by the natural father and the taking of the boy by the adopter with the intention to transfer the boy to the family of the adopter. Another requisite (in some cases) is the *homa* called *dattahoma*<sup>1302</sup> which as described by Śaunaka and Baud. is given<sup>1302</sup> in the Appendix. It is not necessary that the *dattahoma* must be performed immediately after the giving and taking, but it may be performed later and its performance may be delegated to others when the giver or taker is a widow or a *śūdra* or is ill &c. Although in Vedic times women composed hymns and although Harita and Yama stated that women had the *upanayana* performed on them and could study the *Veda* (H. Dh. vol. II pp. 293-295), in later times it was held that women could not study the *Veda*, could not repeat Vedic mantras and therefore could not perform any *homa* (including *dattahoma*). Therefore some writers said that a widow could not adopt at all, while others like the V. Mayūkha said that women are to be assimilated to *śūdras* and so just as a *śūdra* can get the *dattahoma* performed through a *brāhmana*, so a widow, though she cannot herself engage in *homa*, may employ a *brāhmana* to perform the *dattahoma*. *Vida H. Dh. vol. II pp. 365-368* (for deterioration in the

1300. *Vide Basappa v. Gurlingawa* 57 Bom. 74, 77, where the two kinds of *dvayāmusyāyana* are mentioned and it is stated that the *anṭya dvayāmusyāyana* is now obsolete.

1300 *cc.* *Vide Ganputrao v. Balakrishna* 1. L. R. (1947) Bom. 340.

1301. तस्माद् दत्तकपितृषु संस्कारनिमित्तमेव पुत्रजनिति सिद्धम् । दत्तकनिग्रहहोताच-  
र्यत्तन्मात्रे तु दत्तकत्वाभावेत्येति । दत्त. नी. p. 161.

1302. *Vide Appendix.*



position of women), and note 1252 above and V, Mayūkha quoted below.<sup>1301</sup> It has been held that the *dattahoma* is not<sup>1302</sup> necessary among twice-born classes if the boy to be adopted belongs to the same gotra as that of the adoptive father. Jolly (in T. L. L. p. 160) states that the *Dattakadarpaṇa* refers to a text of Yama from the *Sarasvativilāsa* to the effect that *homa* is not absolutely essential in all cases. From Colebrooke's Digest V, 4 CCLXXIII it appears that Jagannātha held the same view. The *Dharmasindhu* remarks that in certain countries an adoption of a sagotra sapinda boy can be validly effected with the mere assent of the giver and adopter without Vedic ceremonies. There is a good deal of conflict in the case law on this point, which is passed over. Among *śūdras* no *homa* is necessary. The ceremony of adoption as described by Baud. gr. *śrautasūtra* II 6. 4-9 (which is probably the oldest on record and which was the one to be followed by the *Taittirīyas* or followers of the Black *Yajurveda*, according to D. M., Sam. K. p. 177 and the *Dharmasindhu* p. 161) is as follows: When about to take (in adoption) the adopter makes ready (or collects) the following viz. two pieces of cloth, two ear-rings, a finger ring, an *ācārya* (officiating priest) who is well versed in the Veda, a bundle of *kuśa* grass, fuel sticks of *palāśa* (*Butea Frondosa*). Then in the midst of invited relatives, after informing the ruler, he serves food to *brāhmanas* in the assembly hall or in the middle of the house. He (the adopter) makes (the *brāhmanas*) pronounce the benedictions 'May the day be auspicious! May you fare well! May there be prosperity!' and performs the acts (usual in all *homas*) from drawing lines on the altar up to carrying forward the *Prapita* water. Vide H. of Dh. vol. II pp. 209-212 for the procedure common to all *homas*. Then he goes into the

1303. वसुधैवकुटुम्बकम् वैदिकनन्दनाम्पहोमवति वृषमित्रये दत्तव्रतमाधिकार इति वसुधासम् । समन्वयहोमस्तु वेत्त निग्रहारा कार्यः । ... सिद्धा अपि दत्तव्रतमाधिकारः । श्री-  
शुद्धाश्च सधर्माः—इति वाक्यान् । अथ वसुध p. 112 (text). Vide H. Dh. vol. II, pp. 394-395 notes 1302-1303 for other texts treating women (of higher castes) and *śūdras* alike.

1304. Vide *Valubai v. Govind* 24 Bom. 215; *Nai Gangadhar v. Śrinivās* 39 Bom. 441 (P.C.), *Govindayyar v. Dorasami* 11 Mad. 3 (P.B.); *Muthuayyengar v. Thiruvangadammat* I.L.R. (1942) Mad. p. 682. सिद्धाश्च होमासम्भवत्तथापि अनादिब्रह्मिण्याः होमादि कारयेदिति हरिनामादयः । सम्बन्ध-  
नत्वेऽप्येवम् । एवं दत्तव्रतापि श्रीशुद्धाश्च सधर्मा इति स्मृतेः । अत एव शुद्धकर्तृकहोमो विग्रहारेन  
पराकरोत्येकः । निर्णयसिन्धु III पूर्वार्धे p. 249: अन्विदेशे वैदिकविधिं निमादि दातुमर्हति  
सन्निविशतुद्वयवत्तथाहोमोऽधिकारमात्रेणोपनयनाद्विधेयः । अतश्च सन्नि-  
विशे दत्तव्रतमधिकारवहारे दत्तवते तत्र मूलं नोपलभ्यते । धर्मसिन्धु III पूर्वार्धे p. 158.

presence of the giver and begs of him 'give me your son'. The other one (the giver) says 'I give'. He (adopter) then takes hold of the boy with the words 'I accept thee for the continuity (of my family)'. Then he decks (the boy) with the pieces of cloth, the ear-rings, the finger ring and performs the acts from laying fuel sticks round the altar up to the offering of oblations into fire: he offers boiled rice into fire with the mantra 'yastvā hr̥dā' (Rg. V. 4. 10 or Tai. S. I. 4. 46. 1) as a *paronvākyā*<sup>1305</sup> (prayer of invitation) and with the mantra 'yasmā tvam sukṛte' (Rg. V. 4. 11, Tai. S. I. 4. 46. 1) as a *yājyā* (prayer of worship or offering). Then having offered oblations of clarified butter with the *vyāhrtis*<sup>1306</sup> he performs the acts from the offering to Agni Svīṣṭakṛt down to the giving of the cow and presents. He (the adopter) gives as *dakṣiṇā* (fee) to the priest these very pieces of cloth and rings (with which the boy was decked).

The procedure laid down by Śaunaka, who appears to be much later than Baud., is somewhat different (though there is a good deal common to both) and is meant for the students of the Rgveda (acc. to Sarṇ. K. p. 175). A few salient points may be noted. The adopter should fast the previous day, he should offer *madhuparka* to the officiating priest, should perform all the details from the placing of fuel sticks on the fire up to the purification of clarified butter with the blades of *kṣāḥ* grass. The giver recites (when begged) the five verses beginning with 'ye-yajñena' (Rg. X. 63. 1-5) and the adopter holds the boy with both hands while repeating the mantra 'dvasya tvā' (Āśv. gr. I. 20. 4), mutters the ṛk 'aṅgād-aṅgād' (quoted above on p. 641 n. 1202) and smells the boy on his head. The adopter offers boiled rice with Rg. V. 4. 10, X. 85. 38, X. 85. 41-46. A much more elaborate procedure is set out in the V. Mayūkha (pp. 120-122 text) and the Dharmasūtra (III pūrvārtha pp. 160-161).

*The results of adoption*—Adoption has the effect of transferring the adopted person from his natural family into the adoptive family. Adoption confers upon the adopted person the same rights and privileges in the family of adoption as the son

1305. For the meaning of *Paronvākyā* and *Yājyā*, vide H. of Dh. vol. II. p. 1060 n. 2372 and pp. 1058-59 respectively. For the offering to Agni Svīṣṭakṛt vide H. of Dh. vol. II. p. 208 and appendix p. 1237 n. 481.

1306. The *vyāhrtis* are the mystic syllables *bhūḥ*, *bhuvaḥ* and *svāḥ*. The offerings will be accompanied with these syllables as follows: 'om bhūḥ svāḥ', 'om bhuvaḥ svāḥ', 'om svaḥ svāḥ', 'om bhūḥ bhuvaḥ svaḥ svāḥ'.



of the body (*aurasa*) except in a few well defined cases. The basic text on this point is that of Manu<sup>1307</sup> IX. 142 which may be literally rendered as follows: 'The son given should not take the *gotra* (the family name) and the wealth of his natural father; the *pinda* (the cake of boiled rice offered to deceased ancestors in *śrāddhas*) follows the *gotra* and the wealth (i. e. is invariably concomitant with them); of him who gives (his son in adoption) the *śrādhā* (obsequial rites) ceases (so far as that son is concerned)'. The preceding verse (Manu IX. 141) states that the adopted son takes the wealth of his adoptive father and all that this verse says is that, after adoption, the son given in adoption does not take the name of his natural father and has no right in the wealth that then is the natural father's and that he does not perform the obsequial and *śrāddha* rites for his natural father. But from this verse a learned Hindu Judge derived the sweeping proposition that 'the theory of adoption depends upon the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and maternal line, and his complete substitution into the adopter's family as if he were born in it'. There is no warrant for the idea of complete severance emphasized here. This dictum was followed in many cases and was accepted by the Privy Council<sup>1308</sup>. Another great Judge went so far as to

1307. गोत्ररिक्तये जनयितुं हरेद् वृत्तिम् कश्चित् । गोत्ररिक्तपुत्रम् पित्रो यदेति  
द्वयतः स्वयम् ॥ मनु IX. 142. The Mit. on Yāj. II. 132 and V. Mayūkha p. 113  
read 'न मजेद् वृत्तिम् सुतः'. But this reading makes no change whatever in the  
meaning, since in ancient sūtras and smṛtis, the roots 'bhaj' and 'har' and  
derivatives from them are used promiscuously in the same sense with regard  
to gotra and rikṣa. Vide the words gotra-bhājah and rikṣa-bhājah cited  
above (on p. 650) from Band, Dh. S. II. 2. 36-37 and Gaut. 28. 30-31, the  
words 'rikṣah bhajeran' (in Gaut. 28. 19) and 'rikṣabhāḥ' (in Gaut.  
28. 26), Vas. 17. 84 (tāyanaḥbhe rīḥ hareḥ), Yāj. II. 132 (पित्रद्वयोरप्यहरेर्वा) and  
II. 138 (दद्याद्वहरेर्वांशं), निष्कर्मसूत्र 13. 40 (वज्रायहः स पित्रद्वयी). Even  
'spaharet' which ordinarily means 'should steal' or 'take away' is used by  
Yāj. II. 138 only in the sense of 'should take or claim'. Manu (IX. 153  
and 154) employs the words 'haret' and 'śādyāt' in the same sense.  
Vide also रिकसभाङ्ग (in Manu IX. 153) and भजेत् (in IX. 192). Therefore  
the learned Judges in *Dattatraya v. Govind* 40 Bom. 429 and in *Bai  
Kesarba v. Shirsangji* 34 Bom. L. R. 1332 (at pp. 1340-41) unnecessarily  
enter into a long discussion on 'haret' and 'bhajet' and the several trans-  
lations of these words by Golapchandra Sarkar and others.

1308. Vide *Uma Shunker Motra v. Kali Komul* 6 Cal. 256 (F. B.)  
at p. 260. Vide *Kali Komul v. Uma Shunker* L. R. 10 I. A. 138, 149 for  
the acceptance by the F. C.

say that 'an absolute adoption appears to operate as birth of the boy in the family of adoption and as civil death in the family of birth, having regard to the legal consequences that are incidents of such adoption'<sup>1309</sup>. But then the P. C. felt that matters were being carried too far and administered the warning<sup>1310</sup> that "As has been more than once observed the expressions 'civilly dead or as if he had never been born in the family' are not for all purposes correct or logically applicable but they are complimentary to the term 'new birth'." We have to see what construction was put upon the verse of Manu by authoritative digests. The V. Mayūkha explains Manu IX. 142 and arrives at the conclusion that the four words *gotra*, *rikṭha*, *piṇḍa* and *śradhā* are not to be taken literally but they are only used to indicate all those consequences only in relation to the natural father and the like that are brought about by their connection with the piṇḍa and the verse of Manu conveys the cessation of all those consequences only. It further adds that the son on being given away in adoption ceases to have similar relationship to his brother, paternal uncle (in the family of birth). It should be noted that the V. Mayūkha does not say that the son given away is dead to the family of birth or ceases to have any connection whatever with the members of the family of birth, but restricts the cessation of relation to the offering of piṇḍa and the taking of the estate after he is adopted. The D. M. quotes<sup>1311</sup> the Sm. C. (II. 289) and holds that by the gift the adopted son ceases to have the same gotra as the giver. The D. C. (pp. 23-24) states<sup>1312</sup> the same proposition, without naming the Sm. C. The learned Judges who had to decide cases of adoption, even if they knew Sanskrit, do not generally appear to have consulted authoritative works other than the few that had been translated and were quite unaware as

1309. Per Sir Asutosh Mukerji J. in *Birbhadra v. Kalpataru* 1 C. L. J. 388 at p. 400 (where Manu IX. 142 is cited in the original for this).

1310. Vide *Raghunath Chandra v. Subhadra* L. R. 55 I. A. 139, 148 followed in *Martand v. Narayan* 1. L. R. 1939 Bom. 586 (P. B.).

1311. एतेन पुत्रवापादकर्मिण्येव दक्षिणस्य प्रतिग्रहीतृपुत्रे स्वार्थं तत्समीक्यते च भवति । पुत्रपुत्रे तु दातादेव पुत्रत्वनिवृत्तिद्वारा दक्षिणस्य स्वत्वनिवृत्तिर्दातृगोत्रनिवृत्तिश्च भवतीत्युच्यते इति चन्द्रिकाकारः । दक्ष. मी. pp. 163-164. The words पुत्रवापाद ... निवृत्तिश्च भवति occur in the स्मृतिच. II, p. 289.

1312. तथा मनुः । गोत्रविक्रये ... तथा । इति । एतेन दातृपुत्रे दातादेव पुत्रत्वनिवृत्ति-द्वारा दक्षिणस्य स्वत्वनिवृत्तिर्दातृगोत्रनिवृत्तिश्च भवतीत्युच्यते । तथा च गोत्रादिनिवृत्तेरेव दूर्ध्वनाह संस्कारावस्तुताम् यिनोति स्मरणात् द्वाद्यामन्तरसंभार्यमाना एव दक्षकल्प संस्काराः प्रतिग्रहीता कार्या न पुनर्जननीन दत्तपूर्वा अयि निवर्तनीयाः । दक्ष. च. pp. 23-24.



to whether even the cessation of the *pinda* and *gotra* and of the right to wealth when a son was given away was so universally accepted by the leading Dharmasāstra works as they thought. The *Sarvasativilāsa* (p. 394) quotes a text of Viṣṇu<sup>1213</sup> that even the adopted son should perform the obsequial rites of the natural father and explains that Manu IX. 142 applies when the natural father has no issue at the time of his death. Rudraskanda on Khādira gr. III 5. 16 says the same. Kamalākara, the author of the *Nirṇayasindhu*<sup>1214</sup> and a first cousin and contemporary of Nilakantha expressly states that Manu IX. 142 only applies when the natural father has a son or sons (other than the one given away) and quotes *Katyaṇya* and *Laugākṣi* cited in the *Pravarasūjarī* (p. 146) in support. The *Dharmasindhu*<sup>1215</sup> also says that when a boy of another *gotra* is adopted after his *upanayana* is performed in the family of birth or when only the *upanayana* is performed by the adoptive father, the adopted boy should repeat both *gotras* at the time of bowing at the feet of elders or in *śrāddha* and other rites; but when all the ceremonies including the *cūḍā* are performed by the adoptive father then the adopted boy has only one *gotra* (*viz.* that of the adopter.).

The plain meaning of the verse of Manu (IX. 142) is that when a man gives away his son in adoption, then that son is transferred into another family, does not perform the *śrāddha* and similar rites for the giver and cannot claim to take the wealth of his natural father as a son on the father's death or demand a partition from his father. The other son or sons

1213. गर्भं—गोत्ररिषये ... स्वया—इति मनुवचनाद् दक्षिणस्य स्वजनस्योक्तस्य विष्णुसमीक्षितौ कथं दक्षिणोपि स्वजनहितः स्वर्गो कुर्यादिति विष्णुवचनमिति चेदुच्यते । मनु दक्षिणजनस्य सत्तापभावे वेदितव्यम् । स. वि. p. 394 : कथा दक्षदुष्टोपे जनपितुः पुत्रा-  
न्तराभावे । एवमप्योपि यो हयेत दुःखः । दक्षस्य on आदिरपुत्र III. 5. 16.

1214. दक्षस्य जनस्य दद्यात्तु मावे दद्यात्तु तत्तत्त्वे गोत्ररिषये... स्वपति मनुः । इदं जनस्य पुत्रमन्वाविषयम् । एतच्च प्रवक्तव्यं कालावयमलौकिकिणा स्वपुत्रम् । अथ वे दक्षकीर्त ... दद्यात्तुपापना भवति ... मन्तोपादिना हयेतः पित्रोः मन्त्रादुक्तोक्तं 'अथ भवेत्तां स्नातु मातापत्यार्थं न स्याद्विषये हरेणः पित्रोः स्वपितृदुष्टे दद्यात्तुमन्त्रोक्तं स्वपुत्रमन्त्रमिदं दद्यात्तुमन्त्रम् आत्मे पुत्रादिरपुत्र दद्यात्तुकीर्तयेत्यरिपुत्रितारं सोपाद्युपितारं चा दुर्गोपाद्युपितारं । नि. नि. III वचनार्थं p. 389. The passage quoted occurs on p. 146 of the *Pravarasūjarī*. This passage is quoted in the *vy. m.* p. 115 also. Vide note 1295 above for a portion of it. The *vi. ni.* folio 127 says 'गोत्ररिषये... स्वया इदं जनस्य दक्षस्य तद्वन्वावे जनस्यार्थं रिषयः आद्युपि । तदुक्तं कालीकलीया-  
जिषये । अथ वे ... भवति.'

1215. परतोकोपपक्षद्वयकारोपमवक्तव्ये पाठकर्तोवेन कृते उपमवक्तव्ये परिशिष्टे वा दक्षस्योपाध्याय-आद्युपिपितृ गोत्रदुष्टोक्तार्थं कार्यं । आद्युपिपितृ पाठकेन कृते पाठ-  
केकापक्ष एव । धर्मसिन्धु III पुरोधं p. 161.

of the giver are to perform the *śrāddhas* for the father and to succeed to the family wealth. But this verse has been twisted by some High Court decisions to yield another rule. Suppose A, a Hindu, has an only son B. On A's death B takes the whole ancestral property as the only surviving co-parcener and then B is given in adoption by his mother to X. Suppose B has a daughter C born to him before his adoption to X. Does B forfeit the estate taken by him as the last surviving male with the result that on B's adoption to X his daughter C takes the estate (which had already vested absolutely in B) as if he was dead in the family of A. The Bombay High Court has held in two decisions that on B's<sup>1316</sup> adoption to X in the above illustration he loses or forfeits the property he took as the last surviving co-parcener in the family of A and his daughter C would take the estate of B as if he were then dead (though he is actually living). The result of these decisions is that the verse of Manu is construed as laying down that though a man may have been absolutely entitled to certain property as a member of one family, on his adoption into another family he loses that estate which then passes on to his heir as if he had died on the day of adoption. This construction of the verse of Manu has not been accepted by the Madras and Calcutta High Courts,<sup>1317</sup> which hold that an adoption does not divest any property which has vested in a man previous to his adoption into another family. It may be noted that the Bombay High Court itself gave a decision<sup>1318</sup> which is inconsistent in principle with the two decisions

1316. Vide *Dattatraya v. Govind* 40 Bom. 429 (where Manu IX. 142 is relied on for this proposition at pp. 433-434) and *Manikbai v. Gokuldas* 49 Bom. 520.

1317. Vide *Venkata Narasimha v. Rangayya* 29 Mad. 437; *Behari Lal v. Kailas Chander* 1 C. W. N. 121; *Shyama Charan v. Seicharan* 36 Cal. 1135.

1318. Vide *Mahableshwar v. Subramanya* 47 Bom. 542. In *Manikbai v. Gokuldas* 49 Bom. 520 (at p. 525) both the cases viz. 40 Bom. 429 and 47 Bom. 542 are apparently quoted with approval, but it is extremely difficult to reconcile the last two cases. If on adoption a separated coparcener is not divested of the estate already taken by him at a partition because the share taken by him cannot be said to be the estate of his natural father within the meaning of Manu IX. 142, the estate taken by a sole surviving co-parcener also cannot be divested by his subsequent adoption, because at the adoption it had ceased to be the estate of his natural father long before the adoption, because when a co-parcener dies his rights lapse to the other co-parceners and because the root cause of being entitled to partition and taking as surviving coparcener is the same viz. the birth right of a son under the *Mitākṣarā*.



cited above, when it held that where a father and his four sons partitioned ancestral family property and one of the sons was subsequently given in adoption into another family, the son so adopted was not divested by the subsequent adoption of the property already taken by the son on partition. In a still later case the Bombay High Court approves of its first decision in 40 Bom. 429 and observes: <sup>1319</sup> 'the verse of Manu refers not only to the *riktha* of the natural father but also to the gotra of the natural father. It is quite clear that the gotra of the natural father is vested in the son by his birth. The gotra so vested in the son ceases after the son is given in adoption. It is difficult to understand why the *riktha* which is spoken of in the same manner as gotra in the verse should not cease by the entire cessation of connection with the natural family. The gotra and *riktha* are inextricably joined together in a dvandva compound and it would follow logically as well as grammatically that the adopted son must lose both together and cannot lose the former and keep the latter.' In this passage the premises that there is entire cessation of connection with the natural family is entirely wrong as has already been shown and will be shown a little later on. The adoptee's connection with the gotra of the natural family does not cease for all purposes at all. Therefore the reasoning of the passage quoted above is entirely misconceived and is further opposed to two well known rules of the *Mīmāṃsā* evolved for the construction of texts. On the interpretation given to Mann IX. 142 by the Bombay decisions that verse lays down two rules (*vidhis*), viz. (1) a person adopted into another family will not take the wealth of his natural father or any one in that family *after* adoption; (2) that a person adopted into another family loses or forfeits on adoption wealth that he may have already taken absolutely in the natural family as a member of that family *before* adoption. These are two entirely different propositions and the rule of *mīmāṃsā* is that one and the same sentence <sup>1320</sup> should not be construed as laying down two rules (*vidhis*) applicable to different sets of circumstances. To so construe a text is to be guilty

1319. Vide *Bai Kesaba v. Shivasangji* 34 Bom. L. R. 1332 which accepts 'na harei' as meaning 'shall not take', and quotes on pp. 1341-42 the D. M., D. C. and V. Mayukha on this verse. The F. C. decision in *Raghu Raj Chandra v. Subhadra* L. R. 55 L. A. 139 does not approve of 40 Bom. 429 as regards the exact point of decision viz. the forfeiture of property already vested before adoption.

1320. अनेकविधितो हि वाक्यभेद उक्तः । तन्मन्वादिनः p. 351 col. 2, II. 2. 26.

of the fault of *vākya-bheda* (splitting up of a sentence so as to yield two distinct rules). The V. Mayūkha construed Manu IX 242 so as to indicate only one sense and avoid the fault of *vākya-bheda* on the analogy of two examples discussed in the *Pūrvamīmāṃsā*<sup>1321</sup> works, but if the reasoning of the Bombay High Court were followed the same fault to avoid which Nīlakaṇṭha strives hard would be committed. There is another *mīmāṃsā* rule<sup>1322</sup> which will be violated by the Bombay High Court's interpretation of Manu IX. 142 viz. when an already existing thing or entity and something to be accomplished or brought about in future are spoken of together in a sentence the thing already existing or accomplished is mentioned simply for the sake of the thing to be accomplished. The accomplished fact is adoption itself. Manu who mentions adoption or the adopted son which is an accomplished entity also mentions along with it the taking of property (*rikthaharaṇa*); hence that taking must have reference to the future bringing about and not the undoing of *rikthaharaṇa* which had already taken place long before.

That the gotra of the natural family persists in some matters even after a person is adopted is made clear by the digests. The *Saṃ.*<sup>1323</sup> K. (p. 183) says that every *dattaka* must, when entering on marriage, avoid the gotra of his natural as also of his adoptive father. The *Dharmasindhu* (III. p. 161) says the same and states that the prohibition against marriage

1321. यथा जातपुत्रः कृष्णकेशोऽनीनादधीत—इत्यत्र यथोक्तप्रातिशेयः, यथा वा—अर्धमन्तर्वेदि मिनोरपथे बहिर्वेदि—इत्यनेन द्वेष्टविशेषो लक्ष्यते तथाच गोत्रविशेषविच्छेदस्यार्थं ईर्ष्याकादीनां पिण्डसम्पन्नयुक्तं कार्यमात्रं लक्षयित्वा तद्विदुर्निवृत्तं चेत् । तेन सोऽपि तुत्यादिसम्पन्नविदुर्निवृत्तिं सिद्धा भवति । अ. मयूख p. 115. Vide my notes to V. M. pp. 189-191 for explanations. *Jat.* (III. 7, 13-14) deals with the 2nd example. The *bhāṣya* of Śabara and the *Tantravārtika* explain how there will be *vākya-bheda* if the sentence (*ardham* &c.) is literally construed.

1322. भूतभण्डसमुच्चारणे भूतं भण्णायोपदिश्यते । शबर on जै. III. 4. 40, p. 276. इत्यत्रेतेषु हि भूतं भागवित्तयो यजार्थः । भूतभण्डसमुच्चारणे च भूतं भण्णायोपदिश्यते । शबर on जै. IX. 1. 9 p. 1652 ; भूतं भण्णायोपदिश्यत इति भूतं इत्ये भवति किंवा निर्वर्तयतीति कियतोऽहम् । दुर्दीका on जै. IV. 1. 18 p. 1307. This is called भूतभण्डसमुच्चारणवाद in the *tantravārtika* on III. 4. 24 and II. 3. 12 and it has been employed elsewhere by the *svayaharamayūkh* (p. 111 text). शबर very frequently employs this maxim ; vide e. g. on जै. II. 1. 4.

1323. विवाहे तु दूतकनाद्येन बीजवतिष्ठतीति पित्र्यार्थोदधारणार्थेन कार्यम् । वरमल-याद्विमिश्रयेषु लक्षितेभ्योक्तः । सं. को. p. 132 ; विवाहे तु सर्वदूतकेन जनकपालकयो-दनयोरेव पित्र्यार्थोदधारणसम्बन्धिनी कथा वजेनीया । नात्र सातपथीयं दास्यपौत्रमिवैवं दूतवर्णनम् उपलभ्यते । धर्मसिन्धु III दूतार्थे p. 161.



with a girl of the gotras of the natural and adoptive fathers is absolute and not restricted to seven or five degrees. Thus if there is no total or absolute cessation of gotra relation with the natural family for all purposes there is no reason why in the case of wealth already taken before adoption there should be a cessation or forfeiture or why the cessation of relation as to rīkṣa should not be restricted to the future. As regards sapinda relationship there is some conflict among the digesta. The D. M.<sup>124</sup> states that the *dyāmuṣyāyana* has to observe the prohibitions against marrying a sapinda girl up to three degrees in the families of the natural father and of the adoptive father, while the simple dattaka has to observe sapinda relationship based upon the presentation of rice balls in the adoptive father's family for three generations (since the adopted son can generally have no particles of the body in common with the adoptive father) and in the natural family sapinda relationship based upon particles of the same body for seven generations. The *Nirṇayasindhu* (III, pp. 290-291) sets out the various conflicting views and gives it as its own opinion that the sapinda relationship must be looked to in marriage up to seven generations in the natural as well as in the adoptive family (in the latter it being based on the offering of balls of rice). According to the V. Mayūkha (p. 119) the simple adopted son has sapinda relationship in the adoptive father's family for seven generations and in the adoptive mother's family for five generations and it seems to hold that there is no sapinda relationship in the natural family (owing to Manu IX. 142). The D. C. (pp. 61-66) appears to hold that the *dyāmuṣyāyana* has to observe sapinda relationship (as stated in the D. M.), while as to the simple dattaka there is sapinda relationship only in the adoptive family for seven generations (as indicated by Manu IX. 142). The *Dharmasindhu* (III p. 161) states that sapinda relationship depends in its degrees on the question whether the adoption is made after upanayana in the natural family or before upanayana or whether all *saṁskāras* from *jātakarma* are performed in the adoptive family.

124. यदिदुहमपत्रं त्रिपुत्रकसापिण्ड्यामिधानं तद् इष्टासुत्पावणामिधानेन विह-  
दयेन सापिण्डिकणामिधानाद् । सुखदत्तकरणं तु प्रतिपूर्वतुक्ते त्रिपुत्रके दिव्यान्वयरूपं  
सापिण्ड्यं जनककुले सातवीर्यमेव यवान्परुषमेवेत्येते तद्व्यञ्जेन । दत्त. मी. p. 187; मम तु  
पालककुले एकपिण्ड्यामीकयान्परित्यज्य सातवीर्यमेव सापिण्ड्यं, अजीजन्येति पीतमेवे-  
र्जनककुलेऽपि तावदेव । नि. सि. III पूर्वापे p. 291.

The Bombay High Court<sup>1325</sup> has held that the adopted son cannot marry within prohibited degrees in the natural family, that to that extent an adopted son cannot be considered as not to have been born in his natural family and that the sapinda relationship is recognized in both the families for the purpose of prohibition of marriage.

The Nir. S., the Dharmasindhu<sup>1326</sup> and the D. C. pp. 48-49 declare that the adopted son can perform the śrāddha of his natural father if the latter has at his death no son or other qualified person to perform it. The Nir. S. and the Sam.<sup>1327</sup> K. (pp. 185-186) both say that the adopted son has to observe three days' mourning on the death of the natural father and *vice versa*; but the D. M. and D. C. (p. 68) differ and state that the simple adopted son has to observe no mourning for his natural father or other relatives in the natural family. If a married man having a son is given in adoption (which is possible in the Bombay Presidency) the son (born before the adoption) remains in the natural family and does not acquire the gotra and rights to property of the family into which his father is adopted. Yet the father who has gone into another family by adoption has been held to retain his right to give in adoption his son who was born before his own adoption and who remains in the natural family<sup>1328</sup>.

From the above discussion it follows that the person adopted retains the tie of blood with his natural family (so that he cannot marry a girl within the prohibited degrees from that family), the saṁskāras already performed in the natural family are not repeated on him after adoption, he still retains the gotra so far that he cannot marry a girl having the same gotra as his natural father and further he has according to most writers to observe mourning for his natural father. Therefore it is clear that the severance from the natural family brought about by adoption is only partial and restricted to pinda and riktha

1325. *Vide Bai Kesurba v. Shivesangji* 34 Bom. L. R. 1332 at p. 1352 and *Dattappa v. Gurlingawa* 57 Bom. 74 at p. 81.

1326. दत्तकस्तु जनकपितुः पुत्राद्यभावे जनकपितुः आहं कुप्याद्वै च सुहृदिनाम् । जनकपालकपोरुभयोः पितोः सत्यवभावे दत्तको जनकपालकपोरुभयोरपि धर्म इत्येत, आहं च प्रतिपादिकमुभयोः कुप्यात् । धर्मसिन्धु III उत्तरार्धे p. 371.

1327. दत्तकीनकुडिनादिपुत्रेषु अधीनवर्गमाह स्त्रीषु च सपिण्डत्वेऽपि मत्स्ये मरणे च पूर्वोपरिपद्योर्भेदश्च निराशयेन न दृशादादि । ... पितृमरणेऽपि दत्तकादीनां निराशम् । नि. सि. III उत्तरार्धे p. 524; शुद्धदत्तकारण जनककुले परंपरामयीचं नाशयेत् । सोऽपिपिण्डमित्ररारः शौचमिदमेतर्धसिद्धत्वात् । इत्यामुष्यावयवश्च तुमवैवाशौचमिति । दत्त. च. p. 68.

1328. *Vide Martand v. Narayan* L. L. R. (1939) Bom. 535 (F. B.).



and connected matters and not *complete* as stated or assumed in some decided cases.

The adopted son is entitled to inherit in the adoptive family as fully as if he were a natural born son i. e. he may inherit not only to his adoptive father, but also to that father's brother or cousin if the latter have no son or no other nearer heir. The adopted son also inherits to the adoptive mother and her relations<sup>1329</sup>, viz. her father and brother. Conversely, the adoptive mother and her relations in her father's family are entitled to inherit to him.

Vas. and Baud. both laid down that if after a son is taken in adoption an *aurasa* son is born to the adoptive father the former takes a fourth share. There is conflict among the smrtis and the digests about the share of the adopted son when an *aurasa* is subsequently born, and about the meaning of 'a fourth share'. The *Dāyabhāga* (X. 13 p. 148) and V. C. p. 150 quote a verse of Kātyāyana<sup>1330</sup> that when an *aurasa* son is born, other kinds of sons, if of the same caste as the father, take only a third of the estate. It has been held in Bengal that in these circumstances the adopted son takes one third of his adoptive father's estate. In Benares and among Jains<sup>1331</sup> the adopted son gets one fourth of the estate. The S. V. p. 393 holds that he gets<sup>1332</sup>  $\frac{1}{4}$ th. In Bombay it<sup>1333</sup> has been held that the adopted son takes not  $\frac{1}{4}$ th of the whole estate, but  $\frac{1}{4}$ th of the share of the *aurasa* son i. e.  $\frac{1}{4}$ th (the *aurasa* son taking  $\frac{1}{4}$ th). In Bombay the same rule applies among *śūdras*.<sup>1334</sup> But in Bengal and Madras it has been decided, relying on a passage in the

1329. दत्तकादीनां मातामहा अपि पतिवर्धनी वा माता तपितर एव पितृव्यादयः मातामहेष्वपि समागतवन् । इत. धी. p. 128 ; छन्दवृत्तकस्य तु पतिवर्धनीया एव मातुः पितादिगणित्वान्नय । इत. च. p. 61. Vide *Dattatraya v. Gangabai* 46 Bom. 341 for the proposition that an adopted son is competent to inherit the property of his adoptive mother's ancestors.

1330. उत्पत्ते त्वोरसे पुत्रे पुत्रीर्णमहराः स्मृतः । सप्तर्षी जसकर्मणो ग्रामाच्छादुन-  
भासिनः ॥ कात्या. q. by दायभाग X. 13. p. 148, वि. वि. p. 150, विवादचन्द्र p. 80. Vide note 1234 for various readings and ham.

1331. Vide *Rukhab v. Chunilal* 16 Bom. 347 (holding that among Jains an adopted son is entitled to  $\frac{1}{4}$ th of the estate of the adoptive father when an *aurasa* son is subsequently born).

1332. यथा च कात्यायनः । उत्पत्ते त्वोरसे पुत्रे चतुर्णामहराः स्मृतः । ... चतुर्णामो नाम चतुर्धन्य षोडशः समन्तेन परिकल्प्यते तस्युत्पत्तेः पञ्चमर्षा इत्यर्थः । स. वि. p. 393.

1333. Vide *Giriappa v. Ningappa* 17 Bom. 100 (where the texts are exhaustively reviewed by Telang J.), *Bala Krishnayya v. Venkata* 43 Mad. 298, 402 (where Kāt., Vas. and Baud. are referred to).

1334. Vide *Takaram v. Ramchandra* 49 Bom. 672 (held that among *śūdras* an adopted son takes one fourth of the natural born son's share).

Dattakacandrika (p. 98)<sup>1335</sup> that the adopted son and the subsequently born *aurasa* son of a *sūdra* share equally.<sup>1336</sup> If the estate is impartible property or an estate to be taken by lineal primogeniture and the owner first adopted a son and then he had an *aurasa* son, it has been held that the subsequently born *aurasa* son takes the whole estate.<sup>1337</sup> If there are two brothers who form a joint Hindu family and one of them has a natural born son and the other adopts a son, the adopted son of one brother gets on partition a share of the family estate equal to that of the natural born son of the other<sup>1338</sup> brother, since the rule of *Vas.* applies only as between the *aurasa* and *dattaka* sons of the same man.<sup>1339a</sup>

1335. अन्त एव-दत्तद्वये यथाजाते कदाचिच्छीरसो भवेत् । विदुः लिखत्य सर्वत्र भवेत् समभागिनी ॥ इत्यपि वचनं दृष्टविद्य एव योजनीयम् । दृष्ट. च. p. 95.

1336. *Vide Asita v. Nitode* 20 C. W. N. 201; *Perrassu v. Subbairayudu* L. R. 48 I. A. 280 (equal share among *sūdras*).

1337. *Vide Sahabgouda v. Shiddangouda* I. L. R. (1939) Bom. 314 (F. B.), *Manu* IX, 163 would support this decision.

1338. *Vide Nugindas v. Bachoo* L. R. 43 I. A. 56 where a passage of the D. C. is explained (at p. 65) which is as follows: एवं धर्मिणः पुत्राभ्यासार्थं पुत्रपितृकरेण दत्तकपौत्रव्यापि द्योतयितुं शक्यते तदुत्तरं सर्वद्वयमपीति । न च पौत्रस्य स्वपितृयोगांशभागित्वनिवृत्त्या दत्तकस्य सर्वतः पितामहसमक्षे माहजपितुम्य-तदुत्तरं शोभते तद्योगात्तादत्तकपौत्रः पितृपुत्रद्वयमेवात्र द्रष्टव्यमिति वाच्यं, पुत्रस्य दत्तकस्य चतुर्थतः पौत्रस्य तु तृतीये समभागं इति कैवल्यात् । तस्य स्वसमाजस्य पितृपद्विज्ञातः माहजपितुमस्य स्वपितृयोगांशतेति यथोक्तमेव साधु । दृष्ट. च. pp. 82-90.

1338a. It appears to me that the V. Mayūka went far beyond the spirit of the ancient smṛti texts and of most of the medieval digests when it allowed the adoption of a married man or even of one who had already had a son. The son to be adopted, it was declared by Śaunaka and others, should be a reflection of an *aurasa* son. Therefore he must be adopted at an age when by proper training and environment he will come to entertain towards the adoptive parents the same feeling that an *aurasa* son has. Hence it appears to me that the Legislature should intervene and provide that no one can be adopted after his *upanayana*, or at all events after his marriage, in the natural family. It is natural for a sonless man or a widow to feel, apart from religious considerations, the necessity of a young person as a solace, security and help in old age, and to adopt a person. Even in England by the Adoption of Children Act (16 and 17 Geo. V. chap. 39) the adoption of a minor is now allowed after observing certain formalities. Further, no adoption by a widow who has not become major according to the Indian Majority Act should be held valid. An agreement or a transfer of the smallest property by a person who is a minor according to that Act is held to be absolutely null and void. There is no reason why an adoption by a widow of 15 or 16 should be upheld when that adoption divests her of all (or now half of) the property of the husband held by her.



## CHAPTER XXIX

### ORDER OF SUCCESSION AFTER THE SON

It has been stated above that *dāya* is either *apratibandha* or *apratibandha* and that sons, grandsons and great-grandsons take the first kind of *dāya*. If a man has no son either aurasa or secondary (viz. the *dattaka*, the other kinds of sons being now forbidden or obsolete), then his property devolves in a certain order. When a man dies sonless and is a member of a joint Hindu family then on the surviving coparceners the whole estate devolves except that after 1937 (by Act XVIII of 1937) his widow takes his place as to the joint family property. But if he dies separated and has male issue (from whom also he is separate) then his male issue will succeed to him in a body viz. his son, grandson (son of a predeceased son) and great-grandson (son of a predeceased son's predeceased son) will together take his separate property *per stirpes*. From Manu IX. 137 (which is the same as Vas. 17.5 and Viṣṇu Dh. S. 15. 46) and 186 and Yaj. I. 78 it follows that the son, grandson and great-grandson equally confer great spiritual benefit and so are the principal group of heirs. According to the strict theory of the *Mitākṣarā* as stated above, son, grandson and great-grandson take by birth an interest even in property acquired by a man himself, but they have no power to prevent him from alienating it. If one or more out of a man's sons, grand-sons or great-grandsons are separate from him then on his death his self-acquired property will first be taken by those sons, grandsons and great-grandsons that are joint with him and if none of these is joint with him, the separated son, grandson and great-grandson will succeed *per stirpes* to his estate.<sup>1339</sup>

This view is at least as old as the Baud.<sup>1340</sup> Dh. S. I. 5. 113-115 which speak of the three ascendants of a man, of himself,

1339. Vide *Gangadhar v. Ibrahim* 47 Bom. 556, *Marudayi v. Doraisami* 30 Mad. 346. In *Ramappa v. Sithammal* 2 Mad. 182 (F. B.) a separated son was preferred as an heir to the widow of the deceased.

1340. अग्निं च यजितामहः पितामहः पिता स्वर्गं सोमं वा आउरः सवर्णायाः पुत्रः पौत्रः पौष्यः पौष्यस्तदुत्तरजैः तेषां च दुष्टपौत्रमभिभक्तद्वारं सपिण्डानामाचक्षते । विभक्तदायानपि संकुलपात्राचक्षते । असात्यस्तेषु तद्वर्गी अर्थो भवति । बौ. च. सू. I. 5. 113-115. The दावभाग (XI. 9, 2, 37) and द्वापतनय p. 189 quote वा., विष्णु and बौ., read 'सत्यद्वयेषु तद्वर्गी अर्थो भवति' and अविभक्तदायाद्वय and explain बौ. at length.

of his full brothers and of his son, grandson and great-grandson from a savarna wife as one group called *avibhaktu-dāya sapindas* and that in the absence of these only, the wealth of a man goes to his *sakulyas*.

On the succession to the property of a man dying without male issue (i.e. without son, grandson or great-grandson) the basic texts are two verses of Yājñavalkya<sup>1341</sup> (II. 135-136): 'The lawfully wedded wife, the daughters and (the daughter's son), the parents, the brothers, their sons, *gotrajas* (agnatic kinsmen), *bandhu* (cognatic relation), a pupil, a fellow student—on failure of each preceding one out of these each succeeding one is entitled to take the wealth of a man who is dead (lit. who has gone to heaven) and who leaves no male issue. This rule applies to all varnas'. The Viṣṇu Dh. S. (17. 4-15) is almost to the same effect. The word 'aputrasya' in Yāj. is taken to mean one having no son, grandson or great-grandson (at the time of death) by V. C., Raghunandana and Mitramisra<sup>1342</sup>. The Mit. explains the words 'to all varnas' as applying even to all that are the offspring of *anuloma* or *pratiloma* unions.

We have separate rules for inheritance to the property of males and to that of females. Then there is great difference as to the rights of women as heirs. First, inheritance to the property of males will be taken up. Here again the fundamental principles are different acc. to the Mit. and the Dayabhāga.

Among the heirs (apart from male issue) of a man as regards his separate property the first is the widow. The wife's right to succeed to her deceased husband's estate, when he died separated and un-reunited, was acknowledged only after a long struggle extending over centuries. The passage of the Tai. S. VI. 5. 8. 2 speaking of women as 'adāyādih' has already

1341. दत्नी दुहितरथैव कितरौ जातस्तथा । तत्पुत्रा गोत्रजा वन्धुशिष्यमनु-  
चारिकाः पञ्चमभावे पूर्वस्य धनभातुकरोचरः । स्वर्गोत्तरपुत्रपुत्रस्य सर्ववर्गेण्यं विधिः ॥ यज.  
II. 135-136. The first is also लघुहारीत 64-65. Translations of these verses  
are cited in many cases; vide, for example, Lallubhai v. Mankorebai  
2 Bom. 388, 416.

1342. अनपत्यस्य दूषपौत्रमपौत्रहीनस्य । दूषः पौषः पशोर्षो वा—दूषादिना अमीदां.  
पाठकनेनैव स्वधाधिकारे सिद्धे तत्समानशक्तिवत् रिचमद्वयस्यापि तद्वैवाधिकारमित्युक्तं ।  
मि. सि. p. 151; अथ अनुपपन्नं दूषपौत्रमपौत्रमापत्तं तेषां पार्श्वपेण्डितानुवादिषोपाह ।  
संपत्तस्य p. 189; अनुपपन्नं दत्नीकान्वितु श्रुतमात्रं पौत्रमपौत्रमापत्तमवश्यम् । य. म.  
p. 503.



been quoted (on p. 606). The meaning of that word is somewhat dubious, as will be shown later on. The *Āp. Dh. S.* II. 6. 14. 2 states generally<sup>1343</sup> that in default of a son the nearest sapinda succeeds but does not expressly mention the wife as an heir, though it mentions (in II. 6. 14. 4) the daughter as a possible heir. *Baud.* also omits the wife as an heir. *Vas.* mentions no woman as heir. *Gaut.* 28. 19 appears to state that the wealth of one who dies without issue should be taken by his sapindas, sagotras and sapravāras or his wife (i. e. according to *Haradatta*, the wife takes a share only along with the nearest sapinda or sagotra and not exclusively). *Haradatta* himself was of this view. *Manu* does not declare that the wife is the heir of a sonless man and there are certain passages which impliedly exclude her, as e. g. *Manu* IX. 185 (the father takes the wealth of a man dying sonless or his brothers take it), IX. 217 (the mother should take the wealth of a sonless man); *Saṅkha* (q. by the *Mit.* *Dāyabhāga* XI. 1. 15) prescribes that the wealth of a man dying without issue goes to his brothers, failing them the parents take it or the eldest wife.<sup>1344</sup> *Devāla* (q. by the *Dāyabhāga* XI. 1. 17-18 and *V. R.* p. 593) arranges the heirs in order as full brothers, daughters, father, half brothers, mother and wife. It may be noticed that in the days of *Kalidāsa* the sonless widow did not succeed to the wealth of her deceased husband, but was only entitled to maintenance and that the estate escheated to the king. This is clear from the letter written by the minister to king *Dusyanta* about the wealth of a merchant who perished in a ship-wreck (*Act VI*). *Yāj.* and *Viṣṇu* among *smṛti* writers were probably the first to clearly enunciate the rule that the wife was the foremost heir of a man dying without male issue. *Br.* makes the wife the first heir of a sonless man and supports his

1343. पुत्राभावे वा वत्सलकाः सपिण्डाः । आप. ध. सू. II. 6. 14. 2: पिण्डगोत्रसिम्बन्धना रिष्ये भवेत्तु स्त्री वत्सलत्वेन । गौ. 28. 19 on which *Haradatta* says: 'स्त्री तु सर्वे समानादिभिः समुत्तीर्यते । यदा सपिण्डादुपो दृढमिति तदा तैः सह वत्सलत्वेनैवैर्वा हरेत् । ... पत्नीदायस्तु आचार्यस्य पक्षे न भवति ।' On *Āp. Dh. S.* II. 6. 14. 2 he gives the view of *गीतम.*, 'गीतमस्तु पुत्राभावे वत्सलाः सपिण्डादिभिः समानाः । ... वत्सलत्वेनैव पक्षे रीचयामहे'.

1344. स्वर्णानस्य कपुषस्य भ्रातृणामि ब्रह्मे तदभावे पितरौ हरेपता उभेष्टा वा पत्नी । शङ्ख (q. by *Mitā*, on *Pa.* II. 135 and *अपराज.* p. 741). *दायभात* XI. 1. 15 p. 134 ascribes this text to *शङ्खलिखित*, *पैटीनसि* and *जम* and adds *सर्वावशिष्टपतन्युच्चारिणः* after *पत्नी*. *अपराज.* also ascribes it (p. 744) to *शङ्खलिखित* and *पैटीनसि*. The *Mit.* explains that it applies to re-united brothers.





the property is small, but only maintenance if the property is large and refutes it by saying that it is opposed to the spirit of Yaj who allows a share to the wife and the mother even along with sons when even joint family property is being partitioned and that the view is also liable to the fault of *vidhiṅgamyā* on the analogy of the Mīmāṃsā rule stated above on p. 605.<sup>1347</sup> The same text of Yaj. will have to be held as laying down only maintenance when the husband left great wealth, and also laying down a share equal to that of a son when the husband leaves inconsiderable wealth.<sup>1347a</sup> Another view was maintained

1347. विध्वनो ..... नवत्यस्य । बीजं वा लिप्सेत । नौ. 28. 19-20. This is explained by धारेवर as 'बीजं वा लिप्सेत भवेत्त यदि बीजं लिप्सेत'. The Mit. says that this really means that there are two courses open to the widow, viz. she may remain chaste and succeed along with the sapinda or she may resort to silyoga.

1347a. Jal. VII. 3. 19-23 as understood by the Mit. may be briefly explained as follows: The Cāturmāsya (seasonal sacrifices) are four, Vaiśvadeva, Varuṇapraghāsa, Sākamedha, Śunāśrīya (vide H. of Dh. vol. II. pp. 1091-1105 for description). In regard to these the following texts occur in the Veda and are cited by Sabara and others: द्वयोः प्रणयन्ति । तस्माद् द्वयं वन्ति उक्तं वा तौ यज्ञस्य पृथक्प्रणयान्थ सक्तेष्वथ । तस्माद् द्वयं वन्ति । ... उग्रव वन्ति । न वैश्वदेवे उत्तरवेदिष्वपकिरन्ति न ह्युग्रासीरिवे । (They carry forward the fire in these two; therefore they march on two; indeed the Varuṇapraghāsa and Sākamedha are the two thighs of yajña; therefore they (are said to) march on two; they fill with earth (the *uttaravedi*) here, but not so in Vaiśvadeva nor in Śunāśrīya). Sabara reads 'उत्तरवेदिष्वपयन्ति' while Mit. reads as above. *Pranayana* means 'carrying towards the east fire from the Gārhapatya fire to the Āhavanīya.' There is *pranayana* in the Darśapūrṇamāsa which is simple (and without details) and there is also *pranayana* in Agniṣoma which is full of details (and not simple). An *uttaravedi* (vide H. of Dh. vol. II. pp. 1096-1097 for description) is not required in Darśapūrṇamāsa, but it is required in a Soma sacrifice. The cāturmāsya are modifications (*vitṛti*) of the Darśapūrṇamāsa, so that whatever is prescribed in the latter follows in the absence of express directions as a matter of course in the former. In the texts quoted above the words 'dvayoḥ pranayanti' lay down a *vidhi* and the words 'tasmād ... sākamedhasa' contain an *arthavāda* which forms a syntactical whole with the *vidhi* and which only eulogises it. The *pūrvapakṣa* argues; As cāturmāsya are modifications of Darśapūrṇamāsa, it is unnecessary to lay down expressly a simple *pranayana* in them; therefore, the *pranayana* prescribed in 'dvayoḥ pranayanti' must be the *pranayana* as described in a Soma sacrifice. Further the prohibition of an *uttaravedi* in Vaiśvadeva and Śunāśrīya indicates the same, since a prohibition implies that there was a fear that what is prohibited would have otherwise followed and since an

(Continued on the next page)

by the Smṛtisaṅgraha and Dhātavyāsa, viz. that the wife would

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uttaravedi is required only in a Soma sacrifice. Therefore the pranayana prescribed in 'dvayoh pranayanti' is of the Soma-pranayana type. To this a partizan of the *siddhāntin* (*siddhāntakadeśin*) replies as follows:—The real view is that in *dvayoh pranayanti* the pranayana is of the simple *darśa-pūrvamāsa* type and the prohibition about *Valśavadeva* and *Sanāśirya* is not to be explained as you do; in the words 'upāra vapanti' an *uttaravedi* is generally (without exception) prescribed for all *cāturmāsya*s, but in the following two sentences 'na valśavadeve &c.' the preparation of *uttaravedi* is forbidden in the case of *Valśavadeva* and *Sanāśirya*; therefore the partizan says that the idea is that, though the pranayana is of the simple *darśapūrvamāsa* type, yet an *uttaravedi* is prepared in the 2nd and 3rd but not in the first and fourth of the *cāturmāsya*s. The *pūrvapakṣin* retorts that even on this construction *vidhivānyamya* would still be there as follows: as there is prescription of *uttaravedi* in all four and prohibition in two (viz. the first and fourth of the four *cāturmāsya*s), there is an option of *uttaravedi* in these latter two (as the rule is 'utpabala-vitodhe vikalpah') and there is no option as to the other two and there will arise the fault of *vidhivānyamya*, the same sentence viz. 'upāra vapanti' being taken as an unqualified and independent rule about the 2nd and 3rd of the *cāturmāsya*s and taken as an optional rule as to the 1st and 4th.

The proper *siddhānta* view is as follows: Though the words 'dvayoh pranayanti' are very general, they are to be narrowed down so as to refer to only two (viz. 2nd and 3rd of the *cāturmāsya*s) on account of the recommendatory passage that follows (speaking of *Varmapraghā* and *Sākamedha* as the thighs of *cāturmāsya yajña*). The *vidhi* and the following *arthavāda* form one syntactical whole (*śārukāya*), as laid down by Jai. I. 2. 7. The *arthavāda* passage means that just as a man marches on (a strength if his thighs are strong, so the *cāturmāsya* sacrifice reaches a successful close by means of *Varmapraghā* and *Sākamedha* in which an *uttaravedi* is specially prepared and fire is laid thereon (being taken from the *āhavanīya* fire by the *ahavyaya* and *prati-prasthātr*). Therefore the meaning is that there is pranayana in the 2nd and 3rd out of the four *cāturmāsya*s and *uttaravedi* is prescribed in those two alone and the words 'there is no *uttaravedi* in *Valśavadeva* and *Sanāśirya*' are a mere *anuvāda* (repetition of what is already known) and not a prohibition, as in the words 'fire should be kindled on the earth and not in the sky nor in heaven'. On this interpretation there is no *vidhivānyamya*. Sabara makes two *adhiśṛaṅgas* of Jai. VII. 3. 19-23, while Kumārila makes one *adhiśṛaṅga* of these seven *sūtras*. He further differs as to the *siddhānta*, which, according to him, is that in 'dvayoh pranayanti' there is a special (*apūva*) kind of pranayana prescribed, *prākṛta* (of *darśapūrvamāsa* type) and *śaṁkṛta* pranayana being the two other views which he rejects. The *Subodhini* on the Mī. very lucidly explains this discussion and concludes: एषा तत्रैकदेशिनि विविरेष्यं दीवसधा 'एतत्कार्यः समोशिकाः', 'मातापत्ये समे तरे' इत्यत्र च सहदाश्रयो अंससप्तशब्दादिति भर्तृवृत्तलपत्ते 'भरणं चात्र कुर्वन्' इत्यादिवाक्यवचनोचनया जीवनेत्युक्तपदपरी खलपक्षनेने तु वाचपक्षलनेनेपक्षेन निश्चयपुत्रांससप्तशब्दपरापेति श्रीकाराक्षपादपदोपेति विविरेष्यदीवो दुर्वा इति । The *Bālabhaṭṭi* repeats the *Subodhini* almost word for word. This *nyāya* occurs in *Dāyabhāga* XI. 5. 16 also.



take the estate of her sonless deceased husband if she submitted to *niyoga* and procured a son for the husband. This view derived support from Gautama 28-19-20, Vas. 17-65 (who prohibits *niyoga* if resorted to through greed of wealth), and Manu IX-146 and 190 (which call upon the surviving brother to procreate a son on the widow of his brother and to hand over the deceased's share to that son). This view is refuted by the *Mit.*<sup>1348</sup> Sm. C. II. p. 294, V. P. pp. 495-497.

Even Medhātithi,<sup>1349</sup> generally a liberal writer, holds that the widow is prohibited from inheriting her husband's wealth.

The *Mit.* after an elaborate statement and refutation of the views of Śrīkarā, Dhāreśvara and others due to the conflict among *smṛti* texts on the question of the widow's right of succession, establishes the proposition that the widow, if chaste, is entitled to the whole of her deceased sonless husband's wealth.<sup>1350</sup> Almost all writers since the time of the *Mit.* accept the widow's right to succeed to her husband's wealth. Many writers note that the *smṛti* texts on the heirship of the widow are in conflict.<sup>1351</sup> They explain verses like those of Nar. (dayabhāga 25-26) providing only maintenance for women either as

1348. तथा समुच्चकारः । अयमु रविमतेषु संयुक्तेष्वप्यस्तु च । सुभक्षिणाभि-  
प्रायस्था पत्नी धनमाप्नुयात् ॥ इति । सुभक्षिणाभिप्रायस्थेति धारेश्वरमतं निश्चयमादिभिः  
सम्यग्युक्तितादुपेक्षणीयम् । स्मृतिच. II. p. 294 ; एतेषामन्योन्यनिरुद्धाणां वचनानां  
धारेश्वर इत्येव स्वतन्त्रमाह । निमक्तसमुच्चारादुत्तरव पत्नी यदि निमोगमद्वारेकुले तदैव  
पतिधने सभते । अभिप्रायस्थिनां तु तत्त्वामभिमतसंसृष्टपत्नीकद्रव्यमात्रमेव । नियोगद्वारेषा-  
मुत्पत्त्याः पतिव्यापदेववर्तमानम् । स्प. प्र. p. 493.

1349. अग्रे कर्मप्राप्तियिमा पत्नीकर्मभक्षामित्थं निमित्तमुक्तं तदुक्तम् । पत्नीकर्मभ-  
क्षामित्थं सुहृद्व्याप्तियिमेवम् । निमित्तपिनिमित्तकुर्येव न विधीयते सती सनः ॥ कुल्लुक. ७७ मय  
IX. 187.

1350. तस्मादुत्तरव स्वपतिव निमक्तस्यासंसृष्टिनी धने परिणीता सती संपत्ता सकल-  
मेव बुद्धातीति स्थितम् । मिता. ७७ वा. II. 135.

1351. अथायुक्तस्य सुतरम् धने परस्परविरुद्धवत्तत्त्वज्ञेन व्याख्यातारो विपद्यन्ते ।  
दायभाग XI. 1. 1 ; एतद्विरुद्धातीति वाक्यानि लक्ष्यन्ते । मिता. ७७ वा. II. 135.  
It may, however, be noted that in a small treatise called *अथुरज्जुपापनसंवाद्*  
of which there are three Mss. in the Maharaja's Saraswati Mahal Library  
at Tanjore (Nos. 19003-5 described in vol. XVIII of their new Descriptive  
Catalogue) an attempt is made to establish that, if a man dies leaving a widow  
and his mother, both take equal shares in the estate. The mainstay of the  
argument is a verse of Kai, quoted in the *वृ. मण्डल* 'भो दुर्मर्ति कलसां सुकृष्ट-  
वने रता । न कुर्वादि सुभृतां चैतं पिण्डं निषेजयेत्' from which the conclusion  
drawn is 'अथुरज्जुपापनसंवादे रतायास्तद्वन्मायाः संपत्तायाः तद्विधायां च सायां  
पत्न्या धनविरलं मायया'.

referring to exclusively kept concubines of the deceased or to the wives of re-united coparceners.

*Putni* means a woman who is married to the deceased, the word being formed from 'pati' with an affix in the sense of 'being fit to join with the husband in the performance of sacrifice' (Pāṇini IV, 1, 33). The Sm. C. II, p. 290 quotes a verse that a woman who is procured for sexual intercourse in exchange for money is only a *dāsi* and is not a *putni* and therefore is not entitled to inherit to a sonless paramour.<sup>1352</sup> The Band. Dh. S. I. II, 20 quotes a similar verse. Several texts require that the widow must be chaste before she can claim the inheritance of the deceased. A text attributed to Vṛddha-Manu<sup>1353</sup> says, 'The wife alone, being sonless and keeping the bed of her lord unsoiled and leading a life of religious observances, may offer pinda to her deceased husband and take his entire estate'. Kāt. (926) also declares that 'the wife who is chaste takes the wealth of her husband'. The widow must be chaste at the time the inheritance opens. The courts have held that once the husband's estate is vested in the widow, it will not be divested or forfeited by reason of *unchastity subsequent* to the death of the husband.<sup>1354</sup> If the widow remarries after inheriting, then, though the remarriage of a widow is legalized by the Hindu Widows' Remarriage Act (XV of 1856), she forfeits the estate of the husband taken by her or the estate which she took as a widowed mother of her deceased son and it passes to the other heirs of the husband or son as if she were then dead and this applies to widows of all castes according to almost all High Courts (even when remarriage

1352. कवकीता तु वा नारी न सा पत्नी विधीयते । न सा दैवे न सा विन्दे द्वासी तं कवकीं विदुः ॥ १०, by तद्विच. II, p. 290, २५, ५, p. 488; कीता द्वासेयं वा नारी सा न पत्नी विधीयते । सा न दैवे न सा विन्दे द्वासी तं काश्यपिकीत् । बी. ध. स. I, II, 20. This is cited as Manu's in यज. नि, p. 397, which quotes a similar verse of Yama on p. 398, २५, ५, 433 says 'अत्र च दासीकवचनमुदाहरणं न सदापि कवकाभावाभिप्रायेण । न तु दासीकवचनभावाभिप्रायेण । विवाहितत्वेन परदारवशात् ।'

1353. अथवा शपथं भर्तुः पालयन्ती ब्रह्म सिद्धा । पत्यवे दद्यात् तपिषं कुलजनैर्हमेत च । इदमन्वु. १, by मिता. on वा. II, 133, द्वापनाम XI, 1, 7, नि. र. p. 592; पत्नी भर्तुर्वचद्वी वा कवकाभिचारिणी । कात्या. १, by the मिता. on वा. II, 133.

1354. Vide *Moniram v. Kerry* L. R. 7 I. A. 115; *Sellam v. Chinnasental* 24 Mad. 441; *Nehru v. Kishan* 2 All. 150 (F. B.).



is allowed by the custom of the caste to which the widow belongs ).<sup>1355</sup>

According to the *Dayabhāga* there being no *apratibandha dūpa*, the widow of a sonless member even in a joint family succeeds to his share in the family property and there is no difference between joint family property and separate property.

In the case of *sūdras*, if the owner dies leaving a widow or a daughter or a daughter's son and an illegitimate son, it has been held by the courts following *Yāj. II. 134*, the *Mit.* and *Dayabhāga IX. 31* that the widow or daughter or daughter's son takes one half and the illegitimate son takes the other half.<sup>1356</sup>

The rights of the widow in property inherited by her from her husband are limited. *Kaṭ. III. 2* was<sup>1357</sup> probably the first to propound clearly the characteristics of the Hindu widow's estate and the verse of *Kaṭ.* quoted below is remarkably close to the words of *Kaṭ.* The *Mahabharata* (*Amuśāsana* 47. 24 ) states that women have only the right to enjoy the estate of their husbands and that they should not waste or destroy the

1355. *Vide Vithu v. Govind* 27 Bom. 321 (F. B.) and *Murugay v. Viramakali* 1 Mad. 226; but *Dhola v. Kanalla* 55 All. 29 (F. B.) holds that a woman belonging to a caste to which remarriage of widows is allowed by custom does not forfeit on remarriage the estate of the first husband which she took as his widow, the principal reasons being that there is no express text about forfeiture on subsequent unchastity and that it would be absurd to hold that a widow, who, on the P. C. ruling in 7 L. A., does not forfeit the estate taken as heir by subsequent unchastity, should be liable to forfeit it by remarriage (which presumes that she wants to live a decent life). Looking to the expressed object of the Hindu Widows' Remarriage Act, section 2 should not have been so interpreted as to apply to widows who could remarry according to caste custom before the Act.

1356. *Vide Shesgiri v. Girva* 14 Bom. 282; *Meenakshi v. Appakutti* 23 Mad. 220 (in this case the original authorities are mentioned and discussed). *Vide अनायुक्तो वरेणर्ह इतिवृत्ता सुवाहने । या. II. 134 ; अथ परिणीतायुक्ता न सन्ति तदा कुलम् धने दासीपुत्रो वृद्धीयाद्यदि परिणीतायुहितरन्तायुक्ता वा न सन्ति । तामज्ज्ञाने तु अर्धे-भागिक एव दासीपुत्रः । निता. ; तदाह यज्ञवल्क्यः । अजा ... इते । सन्ति तु दौहित्रे समे विभक्त्य वृद्धीयादिकेवाभ्यवगात् । द्वायभाग IX. 31 p. 143.*

1357. अनुयायि पतिवधने गृह्यधर्मो मुखसमीपे श्री यन्मातुःशरणं भुज्जति । आगच्छति हि श्रीधनम् । ऊचते द्वायाद् वक्तव्यम् । अर्थशास्त्र III. 2 p. 123; श्रीणां स्वपतिद्वारायस्तु जप-योग्यः स्मृतः । नापहारं शिष्यः कुतुः पतिवित्तान्कथंचन । अनुशासन 47. 24 q. by विवादचन्द्र p. 71, नि. चि. p. 132, the *vy. h.* p. 491, *द्वायभाग XI. 1. 60* (latter three quote it as from the *vyāhāra*).

husband's estate (by gift, sale &c.). Br.<sup>338</sup> (S. B. E. vol. 33 pp. 377-78 verses 50-51 and 53) states: 'when the husband is separate his widow takes all his various kinds of property such as a pledge, except immovable property. After having received movable and immovable property, gold, inferior metals, grain, liquids and clothes the widow shall cause (her husband's) monthly, six-monthly and annual śrāddhas to be performed. Let her honour with funeral offerings and pious charity her husband's paternal uncle, *gurus* (elders), daughter's son, sister's son and maternal uncle as also aged or helpless persons, guests and women'. Mādhava (Par. M. III. p. 536) explains that 'except immovable property' means that she is prohibited from making a sale of immovable property without the consent of the male kinsmen. The V. Mayūkha (p. 138) accepts this interpretation and modern courts have done the same. In *Damodardas v. Purumandus* 7 Bom. 155 it was held that a widow to whom movable property was bequeathed by the will of her husband takes it absolutely. But here the movable property was not inherited by her and as it was a bequest by will it became her strīdhana according to Nār. (q. by V. M. on p. 155). Besides, this was a case from Bombay Island and was governed by the law of V. Mayūkha. In some early cases in Bombay it had been held that a widow in Western India under the Mitākṣarā had absolute power over the movable property inherited by her from her husband. In *Guthellar v. Chundrabhagabai* 17 Bom. 690 (F. R.) it was held that under the law of the Mitākṣarā a widow has no power to bequeath movable property inherited by her from her husband and that to that extent the decision in *Damodar v. Purumandus* must be treated as of no authority if it be interpreted to have decided the point in that way. In *Shri Chamanlal v. Doshi Ganesh* 28 Bom. 453 it was decided that even under the Mayūkha a widow inheriting movable property from her husband has no

1338. पश्चिम्नो धने किञ्चिदाभ्यादि विविधं स्मृतम् । तच्चाप्य स्थावरं सुकृत्वा सर्वेन  
सूतभर्तृणा ॥ जङ्घ्यं स्थावरं हेन कुप्यं धान्यं रसाश्चरम् । आद्यान् वीपवेष्णुर्द्धं मासबासा-  
निसाविकम् । धिगुचसुद्वैदिशान्भर्तुः स्वकीयमाह्वानम् । इत्येकैक्यपूर्वोक्तौ बुद्ध्यानाथा-  
निधीय चित्ता ॥ बुध. q. by स्मृतिक. II. p. 291, वि. र. p. 590 (last two), मदनरत्न  
(folio 96b), परा. मा. III. p. 536, श्र. मनुष्य pp. 137-138. The स्मृतिक., मदन-  
रत्न and श्र. मनुष्य ascribe the last two to यत्नापति. The मदनरत्न says that the  
verse पश्चिम्नो धने was ascribed to बुध. by the स्मृतिकविज्ञा, but it should be  
disregarded as it is opposed to the verse जङ्घ्यं स्थावरं quoted in the कल्पद्रु-  
म and others as that of बुध. १ स्थावरं सुकृत्वा विविधं द्वापादासुमतिमन्तरेण स्थावरविक्रय-  
निवेधपरमिति माधवीये विद्यारण्यभीचरणा. १ मदनरत्न (folio 96b).



power to dispose of it by will. Lastly in *Pandharinath v. Govind* 32 Bom. 59 it was held, after an elaborate examination of authorities, that a widow is not under the *Mitaksarā* competent to make a gift of the movables inherited by her from her husband and it was said (on p. 75) that possibly with the spread of education amongst, and the general emancipation of, their women Hindus may be led to call in aid the relief of Legislature. In cases arising under the *Mayūkha* a widow may dispose of movable property inherited by her from her husband by gift *inter vivos* but not by will. Kat.<sup>1359</sup> (921, 924-925) propounds the limitations of the widow's rights as follows: 'A sonless widow, preserving the bed of her husband (unsoiled) and residing with her elders and being self-controlled, should enjoy (her husband's property) till her death; after her the (other) heirs (of the husband) would get it. A wife who preserves (the honour of) the family would get the share of her husband when he is dead till her death, but she has no power to make a gift, sale or mortgage. A widow engrossed in religious observances and fasts, fixed in the vow of celibacy, always intent on restraining her senses and making gifts goes to heaven even though sonless'.<sup>1360</sup> These verses show that the widow was to enjoy the income of her husband's property till her death; that she could not sell or mortgage or give away immovable property without the consent of the heirs that would come after her and that for religious and charitable purposes or those that conduce to the spiritual welfare of her husband a widow had large powers of disposition. These rules

1359. अयुवा जयने भर्तुः पालयन्ती दुरी रिपता । भुञ्जीतामन्याकामा द्वापदा ऊर्ध्व-  
मायुषः ॥ कात्या. १. by द्वापमान XI. 1. 56, स्मृतिच. III. p. 292; दूते भर्तुरि मर्त्यं  
लभेत कुलपालिका । वाचार्जव न हि स्वाम्य दानापमनिकवे । ज्ञातपामनिरता बद्धचर्ये  
स्वरक्षिता । व्रतदानरता निरपमवृथापि दिवं ब्रह्म ॥ कात्या. १. by स्मृतिच. II. p. 292,  
स्व. मयुख p. 138. The D. B. adds, 'आः पत्नी दुहितरन्ध्रेषादिना ते पूर्वपूर्वपामने  
परपुत्राधिकारिणी निर्दिष्टान्ते तथा पत्न्याधिकार्यमाभावे पुत्रीपुत्रेणा ज्ञातधिकार्याः पत्न्या  
अधिकार्यन्तमेव धीमावसिद्धं धने पुत्रीपुः' द्वापमान XI. 1. 59. The first verse is  
quoted in *Bhugwandeen v. Myra Bacc* 11 Moo. I. A. 487 at p. 512,  
5 Mad. 290, 292, 5 Patna 646, 678. These verses are quoted or referred  
to in 3 Mad. 290, 292, *Pandharinath v. Govind* 32 Bom. 59 (which holds  
that according to the *Mitā* Hindu widow cannot make a gift even of the  
movables inherited by her from her husband), 42 Bom. 136, 143.

1360. It was believed that one to whom no son was born did not go to  
heaven (vide Ait. Br. 'nāputrasya lokēsti' quoted above on p. 654 n. 2239).  
An exception was made in the case of those who observed perpetual  
studenthood (Āp. Dh. S. I. 1. 4. 29) and Manu extends it to chaste widows  
(Y. 159-160). Vide Viṅg. Dh. S. 25. 17.

have been accepted by modern decisions; vide *Collector of Masulipatam v. Choudy Venkata* 8 Moo. I. A. 500 at p. 551 for an oftquoted passage about the widow's powers of disposal. There is a large volume of case law on the widow's powers of alienation, on what are religious and charitable purposes and about the consent of the kinsmen, which have to be passed over here. The heir or heirs expectant on the death of a widow are called reversioners or reversionary heirs in the decided cases. There is no exact Sanskrit word to convey the same idea except 'dayada' that occurs in Kat. quoted above and in D. B. which makes it clear that the reversioners take the estate after the widow's estate ends (by death, remarriage, surrender &c.). The doctrine of the surrender by the widow of her estate in favour of the next heirs (the reversioners) whose estate is said to be accelerated is based on meagre foundations viz. the words of Kat. and the D. B. quoted in n. 1359. Judicial decisions, however, have raised a stupendous structure on these slight foundations; but they are passed over here.

If a man dies leaving several widows then they may partition the property equally among themselves, as stated by the Mit. <sup>1361</sup>

If after partitioning among themselves, one of the widows dies, the portion given to her comes to the other widow or widows i. e. there is survivorship among them and no one else can succeed to the husband's property as long as there is any widow alive and not remarried. Hindu Law does not favour the distribution of a deceased man's estate among his several relatives, as some other systems (like that of the Moslems) do. It gives the whole estate to one heir or one class of heirs to the exclusion of all others. It is greatly to the credit of the ancient Hindu Law that it boldly gave all the separate property of a deceased male to women, viz. to the widow and after her to the daughter in preference to the man's own father or brother or nephew. Attempts are now being made through the Legislature that even when there are sons, the widow and daughters of the deceased should be given shares. Though these efforts spring from the laudable motive of enlarging the rights of women, they do not deserve unqualified encouragement. They will produce friction, cause fragmenta-

<sup>1361</sup>. तासु बहुवध्वोऽसज्जीया विजलीयाश्च तदा पदांशं विभज्य युद्धन्ति । मिता. on वर, II. 133.



tion of lands, make holdings uneconomic and it is extremely doubtful whether they are in the best interests of society or nation as a whole and whether the vast mass of Hindus want them. Prajapati<sup>1362</sup> says that the king should punish as thieves those sapindas and relatives that oppose or obstruct a widow in succeeding to her husband's estate.

The words of the Tai. S. quoted above ( p. 606 ) about women being without strength and not entitled to dāya (adāyādih) really occur in the ritual of Soma offerings and should mean that women are not allowed to share in the drinking of Soma. But the Band. Dh. S. ( S. B. E. vol. 14 p. 231 ) appears to have taken them as excluding women from inheritance. Manu IX. 18 also relies on it and declares that the *manuskāras* on women (except marriage) are not to be performed with Vedic mantras, as the Veda declares them to be 'nirindriya' and 'anṛta'. Later writers like Haradatta ( on Gāṭh. 28. 19, Āp. Dh. S. II. 6. 14. 1 ) and V. P. pp. 517 and 554 base the exclusion of women from inheritance on this passage of the Veda. They say that, though the Vedic text is very sweeping and general, it is meant to exclude only women other than those expressly mentioned in the *smṛtis* as entitled to inherit. For example, the Dāyabhāga XI. 6. 11 quotes Baud. and remarks that the wife is entitled to inherit because of special texts (like those of Yāj. and Viṣṇu) in her favour. The Sm. C. II. p. 294<sup>1363</sup> says that the Vedic passage is only an *arthavāda* (meant for praise) and not an absolute rule and it must be taken as not referring to those women that are expressly mentioned (lit. by being seized by the horn). The V. P. says the same. Aparārka ( p. 743 ) holds that the Vedic passage is merely an *anuvāda* and excludes women only when there is a son. It should be noted that the Par. M. (III. p. 536) holds that the Tai. S. passage merely means that the wife of the sacrificer is not entitled to partake of Soma

1362. असपिण्डा वाम्पशाश्च ये तस्याः परिपन्थिनः । हिंसयुर्थनानि तान्नात्रा चौर्यदण्डेन शासयेत् ॥ बलापति q. by स्मृतिच. II. p. 294; वि. वि. p. 151.

1363. यत्तु कुर्वन् चोक्तं तस्मात्स्वितो निरिन्द्रिया अद्यायादा इति तदपि न इन्द्र-  
मन्वादिबलवत्पादकम् । निरिन्द्रियपुत्रसहचर्यादुपपन्नस्त्रीनिवपन्नावयते । यत्तु वा सर्व-  
स्त्रीनिवपन्नावयति । तथापि द्यायादयः शुद्धसाहित्यपन्त्यादिस्त्रीभ्यतिरिक्तपिवा अर्थाद्-  
भुजिरिति सर्वं सुस्पष्टम् । स्मृतिच. II. p. 294 ; यत्तु तस्मात् स्त्रियो ... अद्यायादा इति भुति-  
वचनं तन्मूलकं च 'निरिन्द्रिया ... निरपमिति स्थितिः' इति मन्त्रवचनं तद् इत्यपि वाक्यं  
शुद्धसाहित्यं धनग्रहणं लोके तद्विषयमवसेयम् । गौतममिताक्षरायो हस्वतोऽप्येवमाह । पृ. व.  
p. 517 ; यदपि चार्थवाहवचनं तस्मात् ... अद्यायादाः—इति तदपि यथापति कर्णार्जवम-  
वाक्यत्वादिति पुत्रसङ्गाधिवचनं व्याख्येयम् । अदरार्क p. 743.

taken in the Pāṇivata cup and that 'indriya' means Soma drink.<sup>1364</sup> But Mādhavācārya in his comment on the Tai. S. I 4, 27 quotes Tai. S. VI. 5, 8, 2 and explains it somewhat differently as meaning that women being without strength do not take the heritage when there are children. It is very remarkable that both the Mīt. and the V. Mayūkha do not at all refer to the Tai. S. or Baud. Dh. S. in speaking of the rights of women to inheritance. It cannot be said that they were unaware of them, but probably they took the Tai. S. text in the sense in which the Par. M. explains it. The result of the reliance on the Tai. S. and on Baud. by most medieval digesta has been that in the whole of India except in the Madras and Bombay provinces only five females are recognized as heirs viz. the widow, the daughter, the mother, the father's mother and paternal grand-father's mother, because they were expressly mentioned as heirs in the smṛtis or early commentaries. This subject will be pursued further a little later on.

The right of the wife to maintenance during her husband's life time has already been dealt with in H. of Dh. II. pp. 568-569. If the wife was guilty of unchastity but repented of her lapse, she was still entitled to be maintained by the husband (vide H. of Dh. II. pp. 571-573). As regards the rights of maintenance of the widows of deceased members of a joint Hindu family there is a good deal of case law which is passed over here. One or two points may be noted. The right of the widows in a joint Hindu family are conditional upon their leading a life of chastity. Male members are often unwilling to maintain widows who are often compelled to go to court. In the 'Selections from Peshwa Daftar', vol. 43, there is an order (letter No. 142) of Rāmāśāstrī, the chief justice of the Peshwa's court, calling upon one Bapuji Tambavekar under threat of penalties to restore the ornaments of the widow of his elder brother (that had died only seven days after marriage) and to give her a yearly maintenance of Rs. 125.

*Daughters.*—Daughters do not inherit as long as any widow of the deceased owner is alive. The daughter also had to

1364. वा च इति—तस्मात्स्वपो ... अद्वयादाः—इति सा पालीभट्टे तत्त्वज्ञा अथो मातुर्वैयस्ये । इन्द्रियशब्देन 'इन्द्रियं च सोमपीयः' इति सोमे वैयस्यवृत्तान्तः । यरा. मा. III. p. 536. This explanation of the यरा. मा. is noted by the स्व. य. p. 517, which adds that the sentence is only meant to extol the importance of the Pāṇivata cup (of Soma). The स्व. नि. p. 459 has almost the same words as those of यरा. मा.



struggle hard for recognition as heir just as the widow had. Gaut., Baud. and Vas. omit the daughter as an heir. Āp. Dh. S. II. 6. 143 recognizes the daughter as an optional heir (probably with sapīṇḍas). When Manu IX. 130 declares, 'one's son is like one's self and one's daughter is equal to one's son; how can another person take the wealth (of the deceased) when she who is the very self (of the deceased) lives', it appears from the context (IX. 128-129) that it is the *putrikā* (the daughter appointed as a son) that is intended to be referred to therein. Medhātithi, Nārāyaṇa and Kuṭṭaka interpret the word 'duhitā' in Manu IX. 130 as applicable to the *putrikā* only. In the Nirukta,<sup>1365</sup> Yaska cites Rg. III. 31. 1 as relied upon by those who support the claims of the daughter to inheritance and also derives the word 'duhitā' in various ways, but from his explanation of Rg. III. 31. 1 it appears that he is referring to the *putrikā*'s right of inheritance. As the usage of appointing a daughter as a son became gradually obsolete, the ordinary daughter came to be recognized by analogy as the heir of a sonless man after the widow. Yāj. and Viṣṇu both recognize the daughter as an heir after the widow. Nār. (dāyabhāga, 50) recognizes<sup>1366</sup> the daughter as an heir after the son on the ground that she continues the lineage (of the deceased father) just like a son. When Nār. (dāyabhāga, 27) speaks of the daughter being entitled to maintenance till marriage, the context shows (as remarked by the Sm. C. II p. 296) that he is referring to the daughter of a person who was re-united at the time of his death. Br. declares<sup>1367</sup> (S. B. E. 33 p. 378 verses 55-56), 'the wife is declared to be the inheritor of the husband's wealth and, in default of her, the daughter; the daughter, like a son, springs from the limbe of a man: how can another man inherit her father's property while she lives?'. Though the words of Yāj., Viṣṇu and Br. were clear enough ancient com-

1365. अपेक्षां दुहितृवापाद्य उवाचरन्ति । दुषदापाद्य इत्येके । शतवृद्धिद्वितुर्नस्यै वाचः । (अ. ३. २१. १) । यस्यासि योवा सन्तानकर्मणे दुहितः दुषदापाद्य । दुहिता दुहित्वा इति विना द्योयैर्वा । निरुक्त III. 3-4.

1366. दुषदाभावे तु दुहित्वा तुल्यसन्तानकारणात् । दुषद्वद् दुहिता योयै पितुः सन्तानकारको नारदः (वाचः ५०) । या तस्य दुहिता तस्याः पित्र्येणो मरणे सतः । आसंस्कारे भजेरेतस्य धरतो विभुचापतिः नारदः (द्वयभागे 27) । उपदिष्टं यदि नारद्वचनं विनक्तविषयं ह्यस्य । संप्रवृत्तिष्वं तु लङिति तस्यैव पूर्वपरपक्षोक्त्यनया स्पष्टमवगम्यते । स्मृतिक. II. p. 296.

1367. भर्तृधनहारी वस्ती तां विना दुहिता भूता । अङ्गद्वङ्गात्मन्वति दुषद्वद् दुहिता विनाम् । तस्यापितुर्धनं तस्यः कथं युक्तीतं मानकः । बृहस्पति q. by the Sm. C. on वा. II. 135, स्मृतिक. II. p. 294, ति. ८ p. 391.

mentators were not prepared to accept them in their literal sense. Viśvarūpa holds that Yaj. means only the putrikā and employs the plural in order to convey that several daughters may be appointed as sons. The Sm. C. II. p. 295 informs us that the same opinion was held by Dhāreśvara, Devastāmin and Devarāta.<sup>1368</sup> The Mit. rightly refutes these views by saying that the word 'duhitarah' in Yaj. cannot refer to 'putrikā', since Yaj. has himself stated the putrikā as equal to the aurasa son (in II. 128), as the putrikā is included among the sons by Vas. and as the widow and the daughters are declared by him as heirs in the absence of all the sons, principal and secondary. Yaj., Viṣṇu, Br. are silent as to whether any discrimination was made between daughters as heirs. Kat. (926) gives<sup>1369</sup> a preference to the unmarried daughter and the Mit. and the subsequent digests follow Kat. The Dayabhāga<sup>1370</sup> (XI. 2. 4 p. 175) quotes a prose passage of Parāśara preferring an unmarried daughter as an heir to a married daughter. Among married daughters the Mit., pressing into service a text of Gaut. on succession to stridhana, holds by analogy that among married daughters the indigent (or unprovided for) one is to be preferred to one who is well-placed.<sup>1371</sup> Herein the Mit. follows common sense and the natural inclination of a father to feel more concern for a poor daughter. The Dayabhāga prefers the unmarried daughter to the married daughter as is done by the Mit., but among married daughters Jimūtavāhana, following an author called Dikṣita, prefers one who has had a

1368. एवं सौपयत्तिकीं पत्यवभावे दुहितुनामितां सुवता सुवरयानिनेन च दुहितुनामि  
धनमिति विधायकं वक्ष्यन्तात तत्पुत्रिकापिधपनेन न पुनरपुत्रिकादुहितुविधपमिति धारेभर-  
त्रेवसाभिवेवरातमते सुवित्तवामिज्ञातमिमाभोग्मादकल्पितं निरस्तं वेदितव्यम् । स्मृतिसं.  
II. p. 295.

1369. तदभावे तु दुहिता पद्यभूदा भवेत्तदा । कात्या. q. by मिता. on वा II. 133.  
स्मृतिसं. II. p. 296 (reads पद्यभूदापतिहिता), मद्. वा. p. 672, परा. मा. III. p. 524.

1370. तत्र यथमं कार्यैवेतां पितृधनधारिणी । यथा वराकरः । अदुकरय सुकरय कुमारी  
रिषेण पुत्रीपात् तदभावे चोदाः । उदायत् पूर्वैकविशेषपरम् । दायभाज XI. 2. 4 p. 175.  
Vide *Jannabai v. Khimji* 14 Bom. 1. 13 (for preference of unmarried  
daughter).

1371. तथा मातृहितामतिहितानां सुमभावे अपतिहिताश्च तदभावे पतिहिता । श्रीधरं  
दुहितुनामयथानामपतिहितानां च—इति मातृमहत्त्वरय पितृधनेषु समानत्वात् । मिता. on  
वा II. 133. 'श्रीधरं ..... हितानां च' is श्री. 28. 22. यथा means 'given in  
'marriage'. अपतिहिता means मिहन्त acc. to the मिता. श्र. मन्वृष p. 141,  
श्र. न. p. 520.



son or who is likely to have a son to a widowed or barren daughter or to one who has given birth only to daughters. This preference is due to the principle of the *Dayabhāga*<sup>1372</sup> that spiritual benefit is the governing factor in succession. The barren daughter or widowed daughter is unable to confer spiritual benefit on her father since she will have no son that will offer *pindas* to the deceased owner ( who will be the maternal grand-father ). The *Mit.* on the other hand relies on nearness of blood (*pratyāsatti*) as the guiding principle. But, as pointed out by the V. P. p. 519, the *Dayabhāga* is inconsistent. There is no reason on its own principle why the unmarried daughter should be preferred to a married daughter who has a son. The latter is then and there capable of conferring spiritual benefit while it is problematical whether the unmarried daughter will confer spiritual benefit (since she may after all be blessed with no son after marriage). *Aparārka* ( p. 731 ) and V. R. ( p. 517 ) give three meanings of the word '*apratisthita*' viz. 'childless, poor, widowed'. In deciding whether a particular married daughter is indigent as compared with another, the Courts refuse<sup>1373</sup> to go into nice or minute questions of the respective monetary positions of their husbands and prefer one to the other only if there is great disparity or marked difference between their positions.

According to all High Courts in India except that of Bombay a daughter's estate is similar to that of the widow. She takes only a limited interest, can only enjoy the usufruct of the property and cannot alienate it. On her death the estate passes not to her heirs, but to the next heir of her father. In Bombay,<sup>1374</sup> however, the daughter takes an absolute interest

1372. बुद्धिपुत्रधिकारे सम्मानद्वये हेतुतया विपक्षितं सम्मानश्च पित्र्यदौर्भागत्वात्, अविपक्षदौर्भागत्वात्कारत्वेन अन्वयसम्मानादसम्मानात्प्रविशयात् । दौहित्रश्च तद्विपक्षद्वयात् ... । अतः दूयकनी सम्भावितदुष्ठा चाधिकारिणी । दम्पत्यन्व-विधत्वात्-बुद्धिपुत्रद्वयाद्विना विपक्षतदुष्ठा पुनरधिकारिण्येवेति दीक्षितमननद्वयणीयम् । द्वापनाम XI, 2, 1-3 p. 175. अथ, म. p. 518. quotes this and remarks, तेनैव यमसं कर्मवैका पितृपुत्रनाधिकारिणीत्यनेन अन्वयनिधानात् । तदानीं च पुत्रसम्माननानिश्चयाभावात् । हेतुनिर्देशाय यथासम्प्रतिशब्दनाम-पक्षकलवारमुपपन्नम् । अथ, म. p. 329.

1373. Vide *Totawa v. Bannawa* 23 Bom. 229; *Munshi v. Kundan* 47 All. 403.

1374. See *Bhagirthibai v. Kahnajirao* 11 Bom. 285 (F. B.); *Vithappa v. Savitri* 34 Bom. 510 [daughters take absolute estates in the Bombay Presidency].

in her father's estate when she succeeds as heir and on her death the estate will go to her own heirs.

A daughter is entitled to succeed, according to the decided cases, to her father's estate even if she be unchaste at the time of his death (except in cases governed by the *Dayabhāga*).<sup>1375</sup> The reason assigned is that *Kat* and other *smṛti* writers do not expressly mention the requirement of chastity in the case of the daughter or mother as they do as regards the widow. According to the<sup>1376</sup> *Dayabhāga* (XI. 2. 8) *Bṛ.* declares: 'a daughter equal in caste to the father and married to a husband of the same caste as her own, who is virtuous and intent on serving her husband, inherits her father's property'. Therefore a daughter who is unchaste cannot inherit. Further a daughter succeeds not because she is the daughter, but because she satisfies all conditions laid down by *Bṛ.* The *Dayabhāga* (XI. 2. 31) further says that the word 'wife' (in XI. 1. 56) is merely illustrative and whatever restrictions are imposed on the wife apply to all women as heirs. The illegitimate daughter, even of a *śūdra*, has no right of inheritance to her father.<sup>1377</sup>

By virtue of local or family custom daughters have in some cases been held to be excluded from inheritance.<sup>1378</sup>

It may be noted that in his *Vaijayanṭi* (on *Viṣṇu Dh. S. XVII. 5-6*) *Nandapāṇḍita* appears to have preferred a daughter-in-law to a daughter; but he stands practically alone in this. Vide *Jolly's T. L. L.* p. 199 and p. 286 for quotation which however is not found in the *D. C. Ma. No. 69* of the *Vaijayanṭi*. The daughter-in-law is not an heir at all in the whole of India,

1375. Vide *Aśvayappa v. Rudra* 4 Bom. 104 (where the original *Smṛtis* and digests are cited at length and discussed); *Kojipada v. Lakshmi* 5 Mad. 149, 156.

1376. तदाह बृहस्पतिः । सद्गतीं सद्गतेनोदा भर्तुमुत्सृज्यते रता । कृताकृता वा पुत्रस्य विपुर्जनद्वयं तु सा ... तेति च पूर्ववचनोदासा बुद्धिना परावृत्तये । तदेवं सद्गतीं सद्गतेनोदा इत्यादिनिषेधनाञ्च बुद्धितुल्यवत्ताया विपुष्वनाधिकारितेति दर्शयति । ... यद्वा पत्नीसुपुत्रस्य च बीमायाधिकारेऽप्यनर्थं बीद्वय इति तात्पर्यम् । ब्राह्मण XI. 2. 8, 13, 31. Vide *Ramanand v. Rai Kishori* 22 Cal. 347 for the exclusion of the unchaste daughter from inheritance.

1377. Vide *Bhikya v. Hobu* 32 Bom. 562 (holds that the illegitimate daughter of a *śūdra* has no right of inheritance as against the son of the *śūdra's* brother).

1378. Vide *Rajrangī v. Manoharnika* 35 I. A. p. 1 (daughters, held excluded by custom among *Bhale* *Sultan Chhatris* from *Orda*).



except in Bombay (where she inherits as the widow of a *gotraja sapinda*). The Bālaṁbhaṭṭi criticises Nandapāṇḍita without naming him and holds that a daughter-in-law inherits only as a *gotraja* and not before a daughter.

Rāghunāṇḍana in his comment on the *Dāyabhāga* makes the position about unchaste daughters quite clear<sup>1329</sup>. The *smṛtis* give preference among daughters to an unmarried daughter i. e. to a daughter who is a virgin (*kumārī*). It has been held by the Indian High Courts that though chastity is not required in the case of daughters to entitle them to inherit, yet in a competition between a married daughter and a daughter who was never married, but became a concubine or prostitute, the latter would be postponed to the former as the latter is not a virgin though unmarried. Some *smṛtis* like *Parāśara*<sup>1330</sup> employ the word *kumārī* in speaking of daughters' succession, while others employ the word '*kanyā*', but both words are synonymous. In *Govind v. Bhiku* 46 Bom. L. R. 699, where a man died leaving as heirs a married daughter and another daughter who never married, but was living as the permanent concubine of another man, it was held that the latter 'cannot inherit the property of her soulless father to the exclusion of or along with his married daughter. The old texts speak of only unmarried daughters and married daughters and prefer the former to the latter. Medhātithi on *Manu* IX. 132 says that *kanyā* means a girl who has had no sexual intercourse with any man. The Mit. makes three classes of daughters succeed one after another viz. (1) unmarried daughter, (2) indigent married daughter, (3) well-to-do married daughter. Judicial decisions have added a fourth variety viz. unmarried daughter who has become a prostitute. This fourth class being a new one must be placed after the other three classes expressly mentioned by the texts and commentaries on the basis of the maxim (intruders or uninvited persons must be seated at the end of or after those

1329. पात्रीपुत्रलक्षणमिति । अयुष्मा शपथं गर्तुः ... दायादा ऊर्ध्वमाप्नुयुः—इत्यस्मिन् कालापरवचनपरलक्षणपूर्वर्षिं भर्तृर्धनहरी पात्री वा स्वाद्युष्मिन्चारिणी—इति पत्नीपुत्रपुत्रलक्षणं पूर्वर्ष पक्षे तु पत्नय इत्येः शास्त्राद्ये इति न्यायेन पत्न्यधिकारः, इह तु पत्नीपदेन लक्षणस्य इतिपुत्रपौरुषि ग्रहणमिति भेदः । रघुनन्दन on दायमाण XI. 2. 31. This is quoted in *Trailokya Nath v. Radha* 30 C. L. J. 233 (about mother) at p. 240.

1330. अयुष्यस्य कुमारी रिष्यं युद्धीयात्तदुभाये-चोदा चेति पराशर्यचनामर्थेयम् कम इति बाटकपः । वि. वि. p. 152 ; the *Valmiki* also quotes *parāśara* almost in the same words. Vide *Tara v. Krishna* 31 Bom. 495 (where the original authorities about the word '*kanyā*' are exhaustively dealt with).

that are specially invited) noted by Śabara on Jai. V. 2. 19 and X. 5. 1 and by Śaṅkara on Vedāntasūtra IV. 3. 3 and employed by the V. Mayūkha (text p. 143) for settling the place of the paternal grandmother after the brother's son.

*The daughter's son (dāuhitṛā).* On failure of daughters the daughter's son inherits. Gaut., Āp., Vas., are all silent about the daughter's son and so are Yaj. and Viṣṇu. But it has been plausibly urged by Viśvarūpa that, since<sup>1381</sup> Yāj. himself has (in II. 134) stated that the illegitimate son of a sūdra takes the whole estate if there be no legitimate son provided there exists no heir up to the daughter's son, the latter must have been intended to be an heir by Yāj. taking after the daughters. The Madanapārijāta (p. 672) relies on the word 'ca' in Yāj. to bring in the daughter's son. Though the printed text of Viṣṇu Dh. S. is silent about the daughter's son, the Mll., the Dāyabhāga and others quote a verse of Viṣṇu,<sup>1382</sup> 'when there is no continuance of lineage through sons and son's son the daughter's sons take the wealth (of the deceased owner): in offering śrāddha to the ancestors, daughter's sons are regarded as son's sons'. The V. Mayūkha (p. 142) includes a sūtra about the dāuhitṛa in Viṣṇu Dh. S. Govindarāja, a commentator of Manu, is said by the Dāyabhāga, to have held, relying on this verse of Viṣṇu, that the daughter's son inherited the estate even before a married daughter of the deceased. But the Dāyabhāga did not approve of this view. The Dāyabhāga (XI. 2. 27) notes that Balaka held that as the daughter's son was not expressly named by Yāj. he came in as an heir after all those that were expressly mentioned as heirs. Baud. Dh. S. II. 2. 17 distinguished<sup>1383</sup> between the putrikaputra and daughter but it is not clear whether Baud. intended to lay down that the dāuhitṛa was an heir. In IX. 131-133 Manu expressly says that the dāuhitṛa

1381. अजातकस्तु दुहितृतासुताभावे सर्वभाक् स्यादज्ञातपुत्रः। बृहस्पतिवचनोक्त-  
अनन्तादिभिः सर्वं राजा हरेत्पुत्रपुत्रा वापरोपज इत्येक-इति। अस्मादेव च दौहित्राभावेन च मातृ  
द्विजातीनामपि पुत्राभावे दौहित्रा जनभाज इति। अत एव च मातामह आह्वयितोऽप्यसि।  
विश्वस्य ०० वा. 'अजातको ... इति'.

1382. तथा गोविन्दराजेनापि मसुरी, काया—अनुवर्तते समारं दौहित्रा जनभाजः।  
पूर्वेषां तु स्वप्राकारे योजा दौहित्रकाः समारं। एतद्विष्णुवचनमतेनोदातः मातृपुत्रो दौहित्रस्यापि  
कारो द्युतिः। स चास्मभ्यं न रोचते। द्वायभाज IX. 23-24 p. 151. The mss. reads  
'अनुवर्तते समारं' and मताः for समारं.

1383. अनुवर्तते दुहितरि जातं पुत्रिकापुत्रमभ्यं दौहित्रम्। गो. प. सू. II. 2. 17.  
The द्वायभाज XI. 2. 21 p. 151 quotes this and remarks, किं च स्मृतिषु दौहित्रपुत्र-  
पुत्रिकाजातपरं नियतम्।



should inherit the entire wealth of a sonless man, that he should offer one *pinda* to his father and another to the maternal grand-father; and that in religious matters there is no difference between a son's son and a daughter's son, since their father and mother (respectively) spring from the body of the deceased owner. The context and the wording of these verses show, as held by Kullūka and other commentators, that the daughter's son here referred to is the son of the appointed daughter. But *Manu* IX. 136 is somewhat clearer. It says, 'through a son born to a daughter from a husband of the same class, whether she be appointed (as a son) or not, the maternal grand-father becomes one having a son's son; that son should offer *pinda* and take the wealth of the maternal grandfather'. The *Mit.* takes the word '*akṛtā*' in this verse as referring to the ordinary daughter, while *Medhātithi* and Kullūka hold that this verse also only refers to the son of the *putrikā* and that *kr̥tā* means an appointed daughter with regard to whom an express agreement was made with her husband, while *akṛtā* means one (who is intended mentally to be appointed as a son) about whom there is no such express agreement. *Bṛ.* (S.B. E. 33 p. 379 verse 58) provides: 'just as (the daughter) gets ownership in her father's property (as an heir), though there may be other relatives, so her son also becomes the owner of his mother's and maternal grand-father's property'.<sup>1384</sup>

The daughter's sons inherit *per capita* and not *per stirpes*. Suppose that A has two daughters B and C, that B has three sons and C has two sons, that then both B and C die in A's lifetime; on A's death his estate will be divided into five parts, each daughter's son taking one fifth.

A daughter's son is really a *bandhu* and a *bhinna-gotra sapinda*, but owing to historical causes and the high religious efficacy of the *śrāddha* offered by him he has been given a very high place among heirs by express texts.

*Parents (pitṛau).* Great divergence prevails among medieval digests on the position of the father and the mother as heirs to their son. *Yaj.* gives no clue as to which among the parents is to be preferred if both are alive when their son dies. The text of the

1384. यथा पित्रुभ्यो वसत्ये तस्याः सत्यपि बन्धुः । तथैव मातुसोपेते मातृमाताभ्यो  
पुत्रे । दृष्ट. q. by *Śāstram* XI. 2, 17. p. 180, १८. p. 521.

Viṣṇu Dh.<sup>1385</sup> S. as read by most digests places the father before the mother. Manu IX. 217 states that when the son dies issueless the mother takes his wealth, while Manu IX. 185 provides that the father takes the wealth of a sonless man and the brothers also. So Manu is not definite about the preference among parents. Kāt. (927) observes,<sup>1386</sup> 'of a sonless man (the heirs) are declared to be the wife of good family, the daughters, the father on failure of them, the mother, the brother and (the brother's) sons'. Br. (S. B. E. 33 p. 379 v. 63) says,<sup>1387</sup> 'when a son dies without leaving his own wife or male issue, his mother is to be considered as her son's heir or a brother may succeed with the consent of the mother'. In this conflict it may be stated that the Mīl., the Madanapārijāta, S. V. (p. 416), the V. C., the V. P. prefer the mother to the father; while the Dāyabhāga, the Sm. C., the Madanaratna, the V. Mayākha prefer the father to the mother. Śrīkara<sup>1388</sup> held that both parents, if alive, succeed together. But the Dāyabhāga, Sm. C.

1385. The विष्णुधर्मसूत्र 17. 4-16 read: अयुवधनं पत्न्यभियां । तदभावे पुत्रितृणामि । तदभावे पितृणामि । तदभावे मातृणामि । तदभावे भ्रातृणामि । तदभावे भ्रातृपुत्राणामि । तदभावे वसुधामि । तदभावे सकुलपणामि । तदभावे सहाय्यभियां । तदभावे ब्राह्मणधनवती राज्यानि । ब्राह्मणार्थो ब्राह्मणानाम् । शान्तस्थपत्न्याचार्यो वृद्धीपाच्छिद्यो वा । These passages are cited as बृहद्विष्णु in the स्मृतिच., मदनरत्न (folio 100 b), च. न. and some other digests and as बृहद्विष्णु by the मिता, the परा. मा., पद्महारमार (p. 252). The च. मयूख p. 142 and मदनरत्न add तदभावे दौहित्र्यभियां after पुत्रितृणामि. The वि. र. p. 593 and वि. चि. p. 151 reverse the order and read तदभावे मातृणामि तदभावे पितृणामि. But the च. न. p. 524 notes that such an order is found in no other work and so must be taken to be a mistake. Even the printed मिता. reads पितृणामि first. तस्यास्तद्विचित्रिका-मदनरत्नकार-कलमत्त-रत्नाकर-पारिजातकारपञ्चानां सन्तानं पितुरभावे मातुः पुत्रपुत्राधिकार इत्येव सिद्धान्तः । वाचस्पतिना तु तदभावे मातृणामि तदभावे पितृणामि—इति बृहद्विष्णुचरने पठित्वा दधानिनाक्षरमेव सिद्धान्तितम् । तत्तु कुत्रापि तद्वैरिक्तस्थे तथा पाठरक्षालिखनाद् ध्वनितमिति मेव । च. न. p. 524. It is, however, to be noted that in the printed वि. र. (p. 593) the father is placed after the mother (मातुरभावे पितादौनामधिकारस्य विधत्तवान्). So it is probable that the text of the वि. र. was tampered with after the time of मित्रमिश्र.

1386. अयुवधनं कुलजा पत्नी पुत्रितरोपि वा । तदभावे पिता माता भ्राता पुत्राश्च कीर्तिताः ॥ कात्या. q. by मित्र. on वा. II. 133 (reads चार्यकुलजा), स्मृतिच. II. p. 299, परा. मा. III. p. 526, च. मयूख p. 141.

1387. भार्यापुत्रविहीनस्य जनवरस्य वसुधायाम् । माता रिक्ताहरी ज्ञेया भ्राता वा तदवज्जाया ॥ बृह. q. by अपरार्क p. 744, स्मृतिच. II. 299, दायभाषा XI. 3. 2 p. 186.

1388. अत एव श्रीकृतेन पित्रोर्विभक्त्य धनमहमसुक्तं तद्व्ययुक्तम् । पिता हरेद्वसुधायं रिक्तं, स्वर्गानस्य अयुक्तस्य माता दायभाष्यायाद् इत्येतादौ श्रीविश्ववर्तिरपेक्षसाधनस्य वक्षिरपेक्षवामित्यतीतिः । स्मृतिच. II. p. 297.



and others criticise this view. The reasons why the Mlt. prefers the mother before the father are three, out of which two are based on grammar. The word 'pitarau' in Yāj. is what is called an 'ekāṣṭhi' dvandva compound and in dissolving it or in the full-fledged dvandva the mother comes first in order and hence she should be preferred. Another reason is:<sup>1289</sup> A father may have several wives and sons from them all, so that a mother is directly related to her own son only and not to the other sons of her husband. So (the Mlt. says) the mother has greater nearness (pratyāsatti) to her son than the father has. The Sm. C. (II. p. 297) refers to Jai. V. 1. 14 where the Vedic sentence 'sārasvatau bhavataḥ' is interpreted and it is stated that the first oblation is offered to Sarasvatī because the Yājñ and Anuvākya verses as first set out are meant for Sarasvatī (and not on the ground of the method in which the *ekāṣṭhi* is dissolved); therefore as to *pitarau* also no reliance should be placed on the dissolution of the compound. Nīlakaṇṭha in the V. Mayūkhā denies the assumptions based upon grammar, says that Pāp. does not direct that in dissolving the compound the word *mātā* must be employed first and there is no authority for doing so.<sup>1290</sup> But the V. P. says that though Pāpini may

1289. विता सप्तजीवुषेवपि साधारणः । माता तु न साधारणीति मन्वासरयति-  
शपोरसीति शिष्यद्वयमसदृशमिदं न हि जननीजनकयोर्जगत् एते सन्निकर्षनास्तस्यमनितः ।  
स्मृतिच. II. p. 297.

1290. The general rule is that several words that would be in the same case when separately used may be compounded together to form a *dvandva*, when they are employed to convey the sense of 'ca', as said in 'cārthe dvandvay' (Tān. II. 2. 29). Such a compound is called *dvandva* and *mātā-pitarau* is an example of it. Another sūtra (I. 2. 64) of Pāṇini states that when words denoting several individuals of the same kind are to be compounded together, only one of them may be retained and that is called an *ekāṣṭhi* compound, which is of two kinds, *sarūpa* (e. g. *hamsaica hamsaica hamsau*) and *virūpa* (when the two words are of different genders). The latter kind of *ekāṣṭhi* is of restricted use. In such a compound when a male and female are associated together only the word in the masculine gender remains or the word 'pitṛ' when compounded with *mātṛ* (vide Pāp. I. 2. 67 and I. 2. 70). Therefore we have two forms to denote the idea of parents viz. *mātāpitarau* or *pitarau*. In dissolving this compound (*pitarau*) we employ the phraseology 'mātā ca pitṛ ca' and in the word '*mātāpitarau*' the word for mother comes first. Therefore among parents as *hairs* mother should come first. Vide pp. 242-244 of my notes to the V. Mayūkhā (ed. of text) where both the Mlt. passage and its criticism by the V. Mayūkhā are explained at length. In *Baṅkriśṇa v. Lakṣmīn* 14 Bom. 605 both the Mlt. and Mayūkhā's criticism thereof are set out (pp. 608-609).

contain no such direction, all grammatical works like the *Kaśika* dissolve the compound as 'mātā ca pitā ca' and grammatical usage for centuries supports the argument that the word *mātā* comes first<sup>1391</sup>. The argument about the mother being nearer is quite specious. Looked at from the son (whose inheritance is in question), the mother and father are both equally proximate. The V. P. holds that according to the maxim that even a slight ground of difference leads one to determine (priority) the mother should be preferred to the father (since we dissolve the compound as *mātā ca pitā ca*). The V. P. (p. 525) further tries to get over the text of *Viṣṇu* (putting the father before the mother) by explaining that if the mother is most worthy as a *piturnāt* and the father an ordinary man she should be preferred but if the father is more worthy than the mother he should be preferred. Hardly any one supports V. P. and the courts have not followed this. Owing to the difference of opinion among the digests on the question of the preference between parents as heirs, queer results follow. For example, in the province of Bombay itself the father is preferred as an heir to the mother in Gujerat, the island of Bombay and in Northern Konkan (because in these regions the V. *Mayākha* has been held to be of paramount authority), while in the rest of the Bombay Presidency the mother is preferred to the father as an heir. The mother takes a limited interest as an heir which is the same as the interest taken by a widow as heir to her husband. The father would take an absolute interest. The word mother includes an adoptive mother; that is, if an adopted son dies leaving no son, widow, daughter or daughter's son, the adoptive mother would succeed<sup>1392</sup> to him as an heir (and even in preference to the adoptive father in those provinces where the *Mit.* is the supreme authority). In the case of a *dyāmugyāyana* adoption, if the son adopted in that form dies leaving only his adoptive mother and natural mother, it has been held that both the mothers take his estate

1391. विद्यहसके नमसि दूरेनिपातविषयो वायुकासनसिद्धलथापि आख्यातुसम्-  
 द्वायसिद्धोत्पत्तेः । न हि कापि पिता च माता च पितृविति विरुद्धं दृश्यते । किं तु माता च  
 पिता च पितृविकेयेष्वप्युपि विप्रबोद्धवत्सावकर इति न्यायेन तत्रापि विनिमयकता सेम-  
 वसीत्यनेनाज्ञयेन तथोक्तः संमतः । यद्, पृ. 525.

1392. *Vidh Anand v. Hari Saba* 33 Bom. 404 (where, in the case of a simple adopted son, the adoptive mother was preferred to the adoptive father).



as co-heiresses.<sup>1393</sup> It has further been held that if, after succeeding as adoptive mother to a *dvyāmusyāyana* son, the adoptive mother again adopts a son, the latter does not deprive the natural mother of the half share taken by her as heir of the deceased *dvyāmusyāyana* son.

The word 'mother' in the *Mit.* does not include a step-mother. The latter is not recognised as an heir of her step-son at all in the whole of India (except in Bombay) on account of the rule of the exclusion of women from inheritance<sup>1394</sup> except where texts expressly mention them as heirs and the property would go to the crown instead of to the step-mother, if the latter alone were left, but she would be entitled to maintenance. In Bombay the step-mother would inherit as the widow of a *gotraja sapinda*, but she is assigned a remote<sup>1395</sup> place among *gotraja sapindas*. If a widow remarries and then her son by her first husband dies without leaving a child, a widow, a daughter or daughter's son his remarried mother is allowed to inherit to him by the<sup>1396</sup> Bombay High Court, though if she inherited first as a mother and then remarried, she is held by the same court to forfeit the inheritance taken (on account of section 2 of the Hindu Widows' Remarriage Act of 1856).

The mother succeeding to her son takes only a limited estate i. e. she cannot alienate it except for legal necessity. If *Vijāñeśvara's* definition of *stridhana* be literally interpreted even property inherited from a son would be *stridhana*. There is a striking example in E. I. vol. XIV p. 83 (the *Śrīraṅgam* plates of *Mummaḍi Nāyaka* in *śaka* 1280) where a mother inheriting a village granted to her son *Parāśarabhaṭṭa* made a gift of it to the god *Rāṅganātha* at *Śrīraṅgam*.

1393. *Basappa v. Gurlingawa* 37 Bom. 74 (which holds that the adoptive mother and natural mother inherit equally). *Vide Kantawa v. Sangangowda* I. L. R. (1942) Bom. 303 for the effect of adoption by the adoptive mother on the estate taken by the natural mother from a *dvyāmusyāyana* son.

1394. *Vide Rama Nand v. Surgani* 16 All. 221; *Tahaldai v. Gaya Pershad* 37 Cal. 214; *Seethai v. Nachiar* 37 Mad. 286, all holding that the step-mother does not inherit to her step-son.

1395. *Vide Kessorbai v. Valab* 4 Bom. 168 at p. 208 (for holding that 'step-mother' is not included in the term 'mother' in the *Mit.*, but that she would inherit as the widow of a *gotraja sapinda* and so as *gotraja sapinda* herself). In this case numerous authorities are examined at length.

1396. *Vide Basappa v. Rayava* 22 Bom. 91 (F. D.) for remarried mother inheriting to her son (by the first husband) dying after her remarriage.





not to be understood in the same sentence or rule as used in the primary and also in the secondary sense. Just as the word 'mother' applies only to the natural mother (and not to the step-mother), so *bhrātaraḥ* should not include both full and half brothers. The V. Mayūkha is however wrong. As pointed out by the *Dāyabhāga*, when Yāj. wants to speak of the full brother he employs the words '*svajana*' (Yāj. II. 138) and when he wants to refer to the half brother he employs the word '*anyadarya*' or '*anyamūtrja*' (Yāj. II. 139). Therefore the word '*bhrātaraḥ*' applies to both full and half brothers in the primary sense. There are other *smṛti* texts such as that of the *Smṛti-saṅgraha* stating that brothers are of two kinds viz. those of full blood and those of half blood.<sup>1400</sup>

The Sm.<sup>1401</sup> C. II. 300 refutes the view of some that the word '*bhrātaraḥ*' in Yāj. is an *ekāśeṣa dvandva* compound that it means 'brothers and sisters' according to Pāp. 1. 2. 68' (*bhrātr-gutram śvaṣṭr-duhitṛśhyām*) and that on failure of brothers sisters inherit. The V. Mayūkha<sup>1402</sup> also does not accept this interpretation of '*bhrātaraḥ*' advanced by some, since there is no reason why '*bhrātaraḥ*' should be taken as an *ekāśeṣa* of the *cirūpa* kind (which is restricted only to rare cases) and not of the *surūpa* kind. The *Balambhatti* supports the wider interpretation of '*bhrātaraḥ*' and at one time the Bombay High Court was inclined to accept this

1400. मौद्वर्षाः सम्बन्धमौद्वर्षा आतरो द्विविधा यदि । विद्यमानेष्वमौद्वर्षे मौद्वर्षा एव भाविनः ॥ संघट्ट पृ. ६९ स्मृतिच II. p. 300, स्व. न. p. 327.

1401. यद्यपि ज्ञातृपुत्रौ स्वपुत्रद्विगुणमिति ज्ञानद्वस्तुता युवेभ्य इत्यत्र विरूपैकशेषं कृत्वा द्विविधतामनुवर्षेण कर्तुं शक्यते तथापि पुत्रासौ दायादा न विद्यः—तस्माद्विधयो निरिन्द्रिया अदायादीः—इति कुतेरिषेतेनेदं निरस्तं वक्तुमिदुक्तम् । स्मृतिच II. p. 300. युवेभ्यः refers to Āp. Dh. 5. II. 6. 14. 1. *Bhrātaraḥ*, if it means only brothers, would be an *ekāśeṣa* of the *surūpa* kind, but if it means 'brothers and sisters', it will be an *ekāśeṣa* of the *cirūpa* kind. The latter is to be resorted to only where there is a special reason to do so, as in the sentence 'bring two kukkūṣas, we shall make a pair of spouses' (and then kukkūṣas means a cock and a hen, while ordinarily it would mean 'two cocks'). कारणान्नसौद्वर्षा हि कुक्कुडावप्य मिथुनीकारस्यान इत्येवमादौ विरूपैकशेषावयविति । स्मृतिच. II. p. 300.

1402. केचित्तु ज्ञातर इत्यत्र ज्ञातृपुत्रौ स्वपुत्रद्विगुणमित्यनुशासनात् ज्ञातरश्च स्वमातरश्च ज्ञातृ इति विरूपैकशेषेण ग्राह्यभावे भगिन्य इत्याहुस्तत्र । विरूपैकशेषे स्यात्ताभावनात् । स्व. मयूख p. 142 ; ज्ञातृपुत्रौ इत्येकशेषेण शब्दकमिद्वान्तरित्वा पूर्वं ज्ञाता तदभावे स्वमा । बालम्बहरी on स्वयहार p. 209.





take, while Manu, Śāṅkha and others are deemed to be only concerned with declaring the right of certain persons to inherit.

The V. Mayūkha proposes a special order of inheritance as follows:—(1) full brothers; (2) then full brother's sons; (3) the gotraja sapindas of whom the first is the paternal grandmother, (4) then the sister, (5) then the paternal grandfather and the half brother at the same time, (6) then the paternal great-grandfather, paternal uncle and the half brother's son together. It should be noted that this conjoint inheritance by heirs of different degrees of ascent and descent which is peculiar to the Mayūkha has been regarded by the Bombay High Court as unknown in practice and obsolete.<sup>106</sup> Therefore it is probable that even in districts governed by the Mayūkha the order of heirs after the paternal grandmother and full sister would be half brother, then half sister and then half brother's son and then it will be the same both according to the Mit. and the Mayūkha.

The Mit. does not expressly mention the sister at all but the Bombay High Court has held her to be a very near heir even where the Mit. is paramount, placing her after the brothers (whether full or half), brother's sons (whether of the whole blood or half blood) and paternal grandmother, the difference from the Mayūkha being that under the latter the full sister comes only after the full brothers and full brother's sons and paternal grandmother and before half brothers and half brother's sons.

One passage of the Mayūkha, being wrongly translated by Borradaile, has led the courts (including the P. C.) to decide that full brothers succeed along with the sons of a deceased full brother wherever the Mayūkha is supreme. The passage of the Mayūkha as translated by Borradaile (vide Stokes H. L. Books p. 88, IV. 8. 17) runs "the sons of a brother also, if themselves fatherless, at the time of the paternal uncle's death, provided they are capable of understanding (the use of) property, will divide the father's share with their father's other brothers, after the example 'among grandsons by different fathers, the allotment of shares is according to the fathers'".

<sup>106</sup> Vide *Sukharan v. Sitabai* 3 Bom. 323 at p. 363; *Kesserbai v. Valab* 4 Bom. 188 at p. 208.

The text of the Mayūkha is given in the note below. It is<sup>1407</sup> almost the same as a passage of the Mitākṣarā, which has not been misunderstood. Both passages contemplate a case like this. A dies leaving B, C, D, his brothers, as his nearest heirs, so that A's estate vests in interest in B, C, D. Before the estate of A is actually divided by metes and bounds, B dies leaving three sons E, F, G. The last three had no right to the property of A at their uncle A's death because their father B was living at the time (i. e. *patṛyugmuranakāle jīvatpitrakāryā āvājāta-dharmasambandhāḥ*). Yet when the property is later on actually to be divided they (E, F, G) will take the share which their father B would have taken if the property of A had been divided at the moment of A's death. Here a distinction is drawn between vesting of property (*dharmasambandhā*) and its actual partition. But, in order to entitle nephews to take by actual partition, their father should have survived the deceased. This is the real meaning.

The Privy<sup>1408</sup> Council, following a wrong translation, held that, under the law of the V. Mayūkha, brothers and the sons

1407. ब्राह्मपुत्रा अपि विद्युत्परायकाले जीवत्पितृकृतपरासं प्राप्तपदसम्बन्धाश्च-अनेक-विधुक्तार्था तु विदुर्नो भावकृतपरा-इति ग्वापेन विदुषमंसी विदुषान्तरे सह विमज्ज दृष्टोदुः । एष. मद्र. प. 142 ; it appears that Borradaile read 'परमपरायकाले जीवत्पितृकृतपरा and misunderstood असंज्ञापदसम्बन्धाः. Compare मिला. 'यदा लघुवे भ्रातरि स्वपति तद्भातृभ्यामविशेषेन पदसम्बन्धे जाते ब्राह्मणविभागागनेन यत्किञ्चिद् भाता सुवत्तदा तदुभायां पितृलोपिकारे यते तेषां ब्राह्मणां च विमज्ज पदग्रहणे विदुर्नो भावकृतपदेति वृत्तम्' । Vide एष. न. प. 328 for a passage similar to the Mit. The मद्र. प. 101 a) and मद्र. पा. p. 672 have also a similar passage.

1408. Vide *Chandika v. Munn* L. R. 29 I. A. 79 where this rule was applied to Abhan Thakurs that had migrated from Gujerat to the United Provinces of Agra and Oudh before the V. Mayūkha was composed, on the ground that the Mayūkha only embodied and defined pre-existing customs. There was thus a double error. The Mayūkha was misunderstood and further the Mayūkha had nothing to do with Gujerat usages as it was composed by a Mahārāṣṭra brāhmaṇa whose family had migrated to Benares. It may be true to some extent as a general proposition that commentators and digest writers embody pre-existing customs of the districts where they wrote. But often times this is not so and varying statements of the law are due to individual opinions. For example, the Mayūkha provides for the simultaneous succession of the paternal great-grandfather, the paternal uncle and the half brother's son ; but the Bombay High Court has discarded this view of the Mayūkha. The Mayūkha places the father before the mother as an heir, but V. T. composed by Nīlakaṇṭha's own first cousin

[Continued on the next page]



of a brother that died *before* the propositus (the brother inheritance to whom is in question) shared the estate of the latter. This erroneous decision has been persisted in to this day on the principle of *stare decisis*. The view of the Valjayanṭi about the sons of the same woman from different husbands being sapindas of each other has already been noted (p. 727). Govindarāja on Manu III. 11 says that it is wellknown that children of different fathers but of the same mother are spoken of as brother and sister. Kullūka on Manu III. 11 refers to this view of Govindarāja.<sup>1409</sup>

A question arises whether the distinction between full blood and half blood made by the Mit. in the case of brothers and nephews was to be carried beyond them. Though a Full Bench<sup>1410</sup> of the Bombay High Court held that the distinction was not to be carried beyond brothers and nephews and that paternal uncles of the half blood inherited along with paternal uncles of the full blood, the Privy Council overruled this decision and held that the preference of the whole blood to the half blood extends to all sapindas of the same degree from the common ancestor (and therefore a paternal uncle of the whole blood excludes one of the half blood). The Madanapārijāta<sup>1411</sup> p. 674 expressly extends the preference of the whole blood to paternal uncles.

(Continued from the last page)

places the mother before the father (folios 139-140). Following this case it was held in *Haridas v. Ranchordas* 5 Bom. L. R. 516 that the son of a predeceased brother inherited along with the brothers of the deceased. This rule is not to be carried beyond brothers and brothers' sons. In *Kesarial v. Jagubhai* 49 Bom. 262 the differing translations of the Mayūkha were referred to (at p. 286). It was held that the principle of *stare decisis* required that the Privy Council decision should be followed and the estate of a deceased brother was allowed to devolve on the sons of a brother that had died *before* the deceased along with the surviving brother.

1409. निरूपितकथोरलेकनातुकपांभंतुखमसिद्धोः । गोविन्दराज ०० मनु III. 11.

1410. Vide *Shankar v. Kashinath* 51 Bom. 194 (F. B.), where the relevant texts are discussed, overruled in *Mahant Garuddas v. Mahant Laldas* L. R. 60 I. A. 189.

1411. विदुग्भावे अपाशामित्र विवाहमद्वयभावे विदुग्पत्न्याभावे सौदृग्मित्रोद्वयवधत्ता पूर्वमेव । साक्षात्पितामहीद्वयाः प्रथमे धनमाजस्तदभावे मापत्यपितामहीद्वयाः । मद्र. पृ. p. 674.

It is noteworthy that the Viramitrodaya which generally follows the Mit. invokes the principle of spiritual benefit in preferring the full brother's son to the half brother's son.<sup>1412</sup>

The heirs from the wife to the brother's sons are spoken of as 'buddhakrama' (lit. whose order is fixed) in the Mit., the V. Mayūkha (p. 143) and other works and as 'the compact series (of heirs)' in the case law. For example, in rejecting the view of some that rely on Manu IX. 217 that the father's mother succeeds immediately after the mother, it is said that the heirs from the parents to the brother's son being mentioned in a fixed order (by Yaj.), no place can be found for the father's mother in the fixed series of heirs and that Manu IX. 187 indicates only this that the father's mother is an heir.<sup>1413</sup> The V. Mayūkha relies on the popular maxim that when certain persons are specially invited for a meeting or a dinner they are seated on seats definitely allotted to them but that those who come uninvited are assigned places at the end of the row of those who were specially invited.<sup>1414</sup>

The question arises whether the brother's son's son inherits immediately after the brother's son and before any other heir. There is a conflict among Sanskrit writers on this point. The Sm. C. II. p. 300,<sup>1415</sup> the Subodhint, the Madanapārijāta (p. 673) say that the compact series ends with the brother's son, while Apararka, Varadarāja (V. Nir. p. 453) and the Vaijayanṭi of Nandapāṇḍita hold that the brother's son's son comes immediate-

1412. पुनर्न चैतत् । असौदरभ्रातृद्वयो हि धर्मिनो मातरं विहाय स्वपितामहीविशिष्टस्य धर्मिणोऽपि पिण्डे द्वाणीति सोदरभ्रातृपुत्राज्जन्मस्यसद्वन्तरित्वाधिकारीति । स्म. न. p. 528.

1413. मातर्यपि च पुत्राणां पितृर्माता धने हरेदिति मातृवन्तरं पितामह्या धनग्रहणे णो विवादीनां भ्रातृसुतवर्पन्तानां बन्धुकर्मत्वेन मध्येऽनुवर्तनाभावात् । मिता. on वा. II. 135; पद्यपीठं (पितामही) मातृवन्तरं पुत्रा तथापि बन्धुकर्मभ्रातृपुत्रान्तेषु मातरे निवेश-योगाद्व्याप्त्यामन्ते निवेश इति च्छ्र्वातृपुत्रान्ते निवेशः । स्म. मयूख p. 143.

1414. For आगन्तुनामन्ते निवेशः, vide शबर on जै. X. 3. 1 'यथा सनाजेषु समानेषु च ये आगन्तवो भवन्ति ते ह्यपि पित्रान्तपक्षेऽप्यर्थे निवेशान्ते एवमिहापि ब्रह्मणम् ॥'. Vide also शबर on जै. V. 3. 19, शारीरकभाष्य on वेदान्तसूत्र IV. 3. 3 and भामती 'आगन्तुनां निवेशोन्ते स्थानाभावात् प्रसाधितः'. In Mohandas v. Krishnabai 5 Bom. 397 this maxim is quoted and it is said that it applies only to the compact series of heirs and that it does not apply to the list of bandhus enumerated by Nīlakaṇṭha (p. 602). The maxim is also relied on in Goelind Bhaushet v. Dhikā 46 Bom. L. R. 609.

1415. गोत्रजा इति धनमात्र इति शेषः । गोत्रजशब्दोऽयं गोबलीवर्द्धन्यायात् पुत्रोक्त-पितृभ्रातृपुत्राज्जन्मस्यसद्वन्तरित्वादिपितामहपुत्रादिगोत्रजेषु वर्तते । Sm. C. II. p. 300; vide V. P. p. 529 for almost the same words.



ly after the brother's son. A Full Bench of the<sup>1416</sup> Bombay High Court holds, basing its decision on the usage of the province, that the compact series ends with the brother's son, while the Privy Council would seem to lend colour to the view that in the Benares school it ends with the brother's son's son. The *Dayabhāga* (XI. 6. 6 p. 208) places the brother's son's son immediately after the brother's son on the ground of the superior efficacy of the *pindas* offered by him.

*Gotrajas* (lit. 'those born in the same gotra' or agnates). Yāj. says that on failure of the heirs up to brother's sons the *gotrajas* succeed. Though one's father, brothers and brother's sons also are really *gotrajas*, they are expressly assigned certain fixed places in the order of heirs and other persons born in the *gotra* are included in the term *gotrajas* on the analogy of such an example as 'let the cattle be brought and also the bulls' where the bulls, though really included under 'cattle' (*gāmāḥ*), are separately mentioned in order to emphasize that special attention must be paid to them on account of their intractable nature. Vide p. 526 note 966 above. Acc. to the Mīt. *gotrajas* are the father's mother (as the first among them), then other *sapindas* and *samanodakas*. The V. *Mayūkha* (p. 143) also says the same thing and places the father's mother as the first among *gotraja sapindas*. It may be remarked that Yāj. avoids the word *sapinda* and employs the word *gotraja*. The Mīt. and *Mayūkha* state that *sapindas* succeed as heirs and that *sapindas* are of two kinds, viz. *gotrajas* (born in or having the same *gotra* as the *propositus*) and those that are born in (or are of) a different *gotra*. These latter (viz. *blānṇagotra sapindas*) are designated as *bandhus* by Yāj. Therefore it comes to this that, though Yāj. does not employ the word *sapinda*, the inheritance goes after the brother's son to the nearest *sapinda*. Yāj. knew the word '*sapinda*' (I. 52) and defines the limits of *sapinda* relationship for marriage (in I. 53), from which it follows that he does not use the word *sapinda* in the sense given to the word by *Jmūtavāhana*. In I. 68 Yāj. mentions both *sapinda* and *sagotra* (in the matter of *niyoga*) and thereby indicates two things viz. that the words were not synonymous and that *sagotra* had the same sense as *gotraja*.

<sup>1416</sup> Vide *Appaji v. Mohaulal* 34 Bom. 564 (F. B.), in which *Juddha Singh v. Lattu Singh* L. R. 42 L. A. 208 was distinguished on the ground that it was not an express decision on the question whether the compact series of heirs ended with the brother's son.

Āp. Dh. S. II. 6, 14, 2 provides<sup>1412</sup> that 'on failure of sons the nearest *sapinda*' (inherits). *Manu*<sup>1413</sup> IX. 187 is the classical text on this point, which appears to mean literally, 'whoever is nearest from among the *sapindas*, to him the estate (of the deceased) shall belong'. This verse has been variously explained by the commentators and digests and variously translated by eminent Judges and writers on Hindu Law. The chief difficulty lies in the expression '*sapindādyaḥ*' and the words '*tasya tasya*'. Some take the first as equal to two words '*sapindāt yaḥ*' and others as one word '*sapindādyaḥ*' (*sapinda* and the like). Some take one '*tasya*' (of him) as referring to the deceased and the other to the inheritor; while others take '*tasya tasya*' as both referring to the inheritor alone, corresponding to '*yaḥ*' (one more '*yaḥ*' being suppressed for the sake of metre). Though the printed text and most of the commentaries read the half verse of *Manu* as in the note below there are several digests that read it differently. For example, the Sm. C. II p. 301 reads it as '*yo yo hyanantarāḥ pindāt*' and quotes Dhāreśvara's explanation that '*pindāt*' means '*sapindāt*'. Kullūka and the *Dayatattva* p. 195 explain '*sapindāt*' as '*sapindamadhyāt*' (from among *sapindas*) and this appears to be the best explanation. Br.<sup>1419</sup> (S. B. E. 33 p. 379 verse 62)

1412. पृथगनेकः सः सपिण्डतः सपिण्डः । आप. ध. सू. II. 6, 14, 2.

1413. अन्तरः सपिण्णाद्यस्तस्य तस्य धने भवेत् । *Manu* IX. 187. Vide Bühler's note on this in S. B. E. vol. 23 pp. 366-368 for the varying interpretations of commentators. Bühler is not right when he emphatically says: "On philological grounds it seems to me improbable that '*anantarah*' *sapindāt*' can mean anything else than 'nearest to the *sapinda*' and that this *sapinda* can be anybody else than the deceased". In the first place the singular '*sapindāt*' can be easily interpreted as used in a generic sense (*jātūchebhyaḥ*) i. e. as meaning '*sapindēbhyah*' (from among *sapindas*). In Āp., Dh., and other works wherever inheritance is spoken of, it is the inheritor who is required to be the *sapinda* or *bāndhava* or *śakalya* and the deceased is hardly anywhere spoken of as the *sapinda* of the inheritor but rather as '*mata*', '*svayjātā*', '*dhaṭṭā*' &c. The verse of *Manu* is variously read, अन्तरः सपिण्णो यस्तस्य तस्य धने भवेत् । एवं हि. p. 431, मदनमूल (folia 100 a) ; यो यो ह्यनन्तरः पिण्णादित्यत्र तस्य धने भवेत् । ... तदेतद् धारेण्यस्य स्याच्छेदो यो नो ह्यनन्तरः पिण्णादित्यत्र पिण्णासपिण्णादित्यर्थो द्रष्टव्यः । स्मृतिक. II. 301 ; स्पष्टद्वारसार p. 254 reads as यो यो as in स्मृतिक. 'अन्तरः सपिण्णाद्य इत्यनेन वा सपिण्णासंगिहितः तस्य सपिण्डसंगिहितस्य धने सपिण्डस्य संगिहितस्य धने भवेदिति निहितत्वात् । सुबोधिनी p. 71.

1419. वक्ष्ये ज्ञानयो नव सकुलया वाग्यवाक्ययो । यस्तासकतस्तेषां सोऽनेपावधने तरेत् ॥ बृह. १. १. १. स्मृतिक II. p. 301, मदनमूल (folia 101 a), वरा. मा. III. p. 529, द्वावन्तर p. 195, एवं. व. p. 327. The स्मृतिक. and मदनमूल explain: ज्ञानयः सपिण्णाः सकुलयाः समानोदकतः । वाग्यवाः ... स्मृत्यन्तरे दुहितः आनपितृव्यतः । पृथाः ।



says, 'when there are several *agnates*, *sakulyas* and *bāndhavas* (cognates), whosoever of them is the nearest shall take the wealth of him that dies without issue'.

The important question is: what is the meaning of the word 'sapinda'. The *Mitākṣarā* and the *Dāyabhāga* propound two different meanings of the word that have been explained at length in H. of Dh. vol. II, pp. 452-458 and 472-477. Therefore it is not necessary to repeat those explanations. The word 'sapinda' is employed by *Pāṇini* (IV. 1. 165) in connection with the technical definition of *gotra* (*Pāṇ.* IV. 1. 162) given by him. It appears to have been used in the sense of blood relationship as stated by the *Kāśika*. According to the *Mit* the right to inheritance depends upon blood relationship (connection through particles of the same body, *śakadairūpavānūvayā*) and the preference among those who are blood relations is determined by nearness or propinquity (*pratyūṣatti*). According to the *Dāyabhāga*, sapinda relationship is based on religious efficacy i. e. on the capacity to offer the cake or ball of rice in *śrāddha* and it has evolved a peculiar method of determining preference which will be explained immediately below. That there appears to have been a close connection between taking the wealth of the deceased and offering *śrāddha* to him may be admitted. But the question is whether a person was deemed to be an heir and entitled to take the estate of the deceased because he offered *śrāddha* to that person or whether the heirship was originally determined on other grounds and whoever took the estate was saddled with the responsibility of performing *śrāddhas* for the benefit of the soul of the deceased. It is difficult to give a convincing answer to this. It appears, however, that ancient *sūtras* do not emphasize the religious efficacy of pindas as the determining principle in heirship. *Āp.*, *Manu*, *Bṛ.* (particularly the first and last) speak only of nearness (which more naturally means 'nearness of blood'). *Yāj.* omits the word sapinda altogether in mentioning heirs. *Manu* IX. 142 states that pinda follows the *gotra* and *riktha* (wealth). *Viṣṇu* Dh. S. XV. 40 declares, 'whoever inherits the estate (of the deceased) has to offer pinda to him'. This rule is emphasized even by those works (like *V. Mayākha*)<sup>1420</sup> that make blood relationship

1420. धृतस्य रिपयद्राजिना येन किमपि राजपदं तेनोपदेष्टुं दशसहस्रं कार्यम् । तदा च पित्रा । यथायहं न पित्रदारी स्तुतः—इति । अ. मनुष्य p. 145; यो धन-मादृशीत स तस्मै वाक्यं कुपयिष्ये च विदुषे वृथा । स्तुति १. by अथर्वक p. 746., मीमा, २० मनु. IX. 132, वि. र. p. 399 and बालम्भडी II. p. 207 (ascribes to बृह-सामन्त). अथर्वक तुलसीदासद्विजय च पारंगतयिना पित्रदानेन स्पष्टम् । अ. म. 504.

the test of heirship by saying that whoever even including the king (who takes by escheat on failure of all heirs) that takes the estate of the deceased must perform or arrange for the performance of the funeral ceremonies of the deceased up to 10 days after death and the *śrāddhas*, as said by the *Brahmapurāṇa* 220, 79 (*tadabhāve ca nṛpatiḥ kṛayettvakutumbinām tājātiyair-naraiḥ sumyak-dāhādyah sakalāḥ kriyāḥ*). The Mit. view is upheld by V. R., V. G., Par. M., *Madanapārijāta*, *Sarasvatīvilāsa*, V. *Mayūkha*, *Bālabhāṭṭa* and many other works. The theory of the *Dāyabhāga* is propounded by only a few medieval works and writers like *Aparārka* (quoted above on p. 725), *Raghunandana*, *Nandapāṇḍita*. The *Vīramitrodaya* generally follows the Mit. but in certain cases it relies on or refers to the principle of religious efficacy in preferring one heir to another, as for example, in preferring the full brother to the step-brother (compare note 1397 and V. P. p. 528) or in preferring three male descendants to the widow. It is therefore that the Privy Council remark,<sup>1421</sup> 'now it is absolutely clear that under the Mitākṣarā while the right of inheritance arises from blood relationship or community of blood, in judging of the nearness of blood relationship or propinquity among the gotrajas the test to be applied to discover the preferential heir is the capacity to offer oblations'. Its position is peculiar.<sup>1422</sup> It says that the capacity to offer *pindas* is not the governing principle as to heirship, but it is only useful in finding out the preferential heir among gotrajas.

*Viṣṇu* quoted by the Mit. (not found in the printed *Dharmasūtra*) prescribes: 'If there be no son or grandson left for continuing the line, the daughter's sons shall take the wealth, for in regard to the obsequies of ancestors daughter's sons are regarded as son's sons'. This is in line with *Manu* IX. 136 (cited above on p. 720) which says that the daughter's son should offer the *pinda* and take the wealth. Therefore it appears that *Manu*, *Viṣṇu* and others relied upon the capacity for the offering of *pinda* as the reason for being entitled as heir, but that this idea was vague and not elaborated in any way. The idea that blood relationship settled the right to inheritance is implicit in the order of heirs in *Yāj. Yaj.* (II 127) in speaking of the *gotraja* son says that he inherits the wealth of both (the

1421. *Vidye Buddha Singh v. Lalla Singh* 42 I. A. 208 at p. 227.

1422. तसि पिण्डदानाधिकार एव दाहग्रहणे सर्वोपकारः, ज्येष्ठे सति कर्त्तव्यसामानाधिकारेपि दाहग्रहणात् । ... गोत्रजादीनां दाहग्रहणार्थमेकैषां सन्नतानि पिण्डदानाद्युपकाराणि प्रत्यस्मानिमे यस्यव्युपकारिण्यवर्त्तन्ते न तु तदेव सर्वोपकारः । २५. अ. प. 461.



begetter and the husband of the wife on whom he is begotten) and offers *pinda* to both. He *does not* state that because he offers *pinda* to both he inherits the wealth. So this verse also favours the view that offering of *pinda* was a duty laid upon him who took the wealth (except in the case of male issue). Hence it appears that the theory of the Mit. also has a very respectable antiquity and further it has been followed by most medieval writers throughout India (except in Bengal).

The argument of the *Dayabhāga* (which was propounded before it by a writer probably named Udyota<sup>1423</sup>) that the taking of a deceased person's estate depends upon the spiritual benefit conferred on him is briefly as follows. It relies principally on Baud. Dh. 8. and Manu. In the section on the partition of wealth (which begins from IX. 103) Manu (IX. 137) declares the super-eminent spiritual benefits conferred by the son, grandson and great-grandson; further (in IX. 106) Manu states that the son gets all wealth from his father because he frees the latter from debt, that (in IX. 139) the daughter's son also is spoken of as saving the grandfather in the next world and as therefore entitled to the grandfather's wealth, that the verse immediately preceding Manu IX. 187 (declaring that the nearest amongst sapindas inherits) speaks of the offering of *pinda* to three ancestors; and since it is reasonable to presume that the blind and the like are excluded from inheritance (Manu IX. 201) because they are incapable of performing religious rites; it follows that Manu and others regarded the taking of wealth as dependent on the conferring of spiritual benefit. This point of view the *Dayabhāga* emphasises at every step. It<sup>1424</sup> says: "There are two purposes for which wealth is acquired, viz. for worldly enjoyment and for the unseen or spiritual benefit derived from making gifts and the like; but when the acquirer is dead, he cannot have enjoyment of the wealth and the only purpose that remains is the unseen purpose or benefit. It is therefore that Br. says, 'from the wealth inherited, the inheritor should carefully set apart half for the benefit of the deceased for defraying the expenses of the

1423. उपकारकत्वेनैव प्रसूतवन्तो व्यावसायो मन्वादीनामभिमत इति मन्यते । इति निरवधारितोद्योतेन द्योतितोऽयमर्थो विद्वद्भिरादर्शितः । द्वापभाग XI, 6. 31-32 p. 216.

1424. धनार्जनस्य हि प्रयोजनद्वयं भोगार्थं च दानाद्यदृष्टार्थं च । तत्रार्जकरस्य तु दान-  
त्याजने भोगव्यवसायेनादृष्टार्थमेव शिष्टम् । अत एव कुहरयति । समुत्पन्नाद् धनाद्भवेत्तदर्थं  
स्वापयेत् वृषह । मामवाप्त्यामिहे आदौ वाचिके च वचनतः । द्वापभाग XI, 6. 13. The  
reading of वृष, is q. by vi. r. p. 595, चव, ति, p. 447, विनादचवद् p. 61.

monthly, six-monthly and annual śrāddhas". The subject of śrāddhas will be dealt with in another volume. But here it is necessary to say a few words for making the position of the Dayabhāga clear. Among the several kinds of śrāddhas two deserve notice, viz. *Ekoddīṣṭa* and *Pārvāṇa*.<sup>1425</sup> The first (*ekoddīṣṭa*) is performed for the benefit of a single deceased person. There are sixteen such śrāddhas performed for the benefit of the deceased during the course of one year after his death or on the 11th day of death. And every year on the anniversary of death an *ekoddīṣṭa* śrāddha may be performed for a deceased person. The *pārvāṇa* śrāddha is performed on certain specified days, such as the *amāvāsya* of a month, or particularly in the dark half or on the *amāvāsya* of Bhādrapada or on a *śukrānti*. In this śrāddha the three deceased paternal ancestors of the performer are principally invoked and the three deceased paternal ancestors of his mother are also invoked but their invocation is secondary and is dependent on the principal invocation. There is one more word that must be explained here viz. *sapṇḍana* or *sapṇḍikaraṇa*. This is a śrāddha rite performed one year after the death of a person or on the 12th day from his death. By this śrāddha the person recently deceased ceases to be a *preta* (a departed spirit) and is elevated to the rank of *pīṭṛs* (Manes). The widow and daughter can perform only the *ekoddīṣṭa* śrāddha, while sons, grandsons and great-grandsons can perform the *pārvāṇa* śrāddha also. The Dayabhāga refers (XI, 1. 34 p. 162) to the fact that the three male descendants, by performing the *pārvāṇa* śrāddha, confer great spiritual benefit on the owner (compare note 1342 above). Elsewhere (XI, 7. 17 p. 211) it designates the *pārvāṇa* as 'traipuruṣika' (i. e. performed for the benefit of three ancestors). When speaking of the right of the widow to inherit it emphasizes (XI, 1. 43 p. 165), by quoting verses from Vyāsa,<sup>1426</sup> that

1425. 'एकः उद्दिष्टः पतिम् आदे तदेकोद्दिष्टमिति कर्मनामयेयम्.' मिता. on पा. I. 251 : तत्र विपुत्रयोर्द्वेभ्यः पत्निकये तत्पार्षणम् । एकपुत्रयोर्द्वेभ्यः क्विन्मासमेकोद्दिष्टम् । मिता. on पा. I. 217. पार्षण means 'performed on a *pārvāṇa* day.' Acc. to the निष्पद्युराण III. 11. 118 the *pārvāṇa* days are. अमावास्या, पौर्णिमा, चतुर्विंशी, अहमी and पितृसंक्रान्ति. अतिथ्यपुराण १. 18 आहूतम् p. 192 defines the पार्षणमास as 'अमावास्या पत्निकये तत्पार्षणमुदाहृतम् । क्विपते वा पृथग्नि पत्न्यपार्षणमिति स्मृतिः'.

1426. तदाह व्यासः । सूते भर्तारि साध्वी स्त्री ब्रह्मचर्यव्रते निष्ठा । स्मृता वसिष्ठिने वृषा-स्वभर्त्रे सतिता जटोत्तरे. . . होषाग्निरस्य भार्यामात्मानं च वरायने । तत्पत्यसुमर्यं भारी निरपे धर्म-परायणा ॥ तदेवमादिभिर्यजुनेः पत्न्या अपि । वाकनिरतारकत्वाद्भुतेः धनहीनतया साक्षात् कुर्वती पुत्र्याह्वनकलसमन्वेन पार्षणमपि पश्यतीति तदर्थं तज्जने पूर्वस्मादप्यनेन व्यतीति पुत्रं पश्यतः स्मरन् । द्वापभाग XI. 1. 43-44 p. 165. This is quoted in एव. व. p. 509.



a widow by leading a chaste life, by offering water mixed with sesame every day to her deceased husband, by making gifts and observing fasts saves himself and her husband in the next world. It adds that if the widow misbehaves she makes her husband fall, as husband and wife share in the fruits of each other's good and evil deeds. Therefore the widow takes her husband's wealth for his benefit. *Bṛhan-Manu* (q. by the *Dāyabhāga* XI. 1. 7 and by the *Mit.*) declares that a sonless chaste widow should offer *piṇḍa* to her husband and take his entire estate. Similarly *Prajāpati* (cited above on p. 709 and quoted by even the *V. Mayūkha* and other works of the *Mitākṣarā* school) requires the widow who inherits all the movable and immovable property of her deceased husband to perform the monthly, six-monthly and annual *śrāddhas* of her husband.<sup>1427</sup> Similarly the *Dāyabhāga* allows the unmarried daughter or a married daughter having a son (or who is likely to have a son) to inherit because her son will offer *piṇḍa* to the owner who will be the maternal grand-father. It prefers the daughter's son<sup>1428</sup> as an heir even to the father because the former offers a *piṇḍa* to the owner himself, while the father offers *piṇḍas* to two of the three paternal ancestors to whom the owner would have been bound to offer *piṇḍas*. The *D. B.* winds up by saying<sup>1429</sup> that the order of inheritors must be followed in such a way that the wealth of the deceased may be most beneficial to (the soul of) the deceased. In certain respects the *D. B.* does not strictly and logically follow its own theory but is compelled to twist it by reason of the places assigned by special

1427. On आद्वय द्वापयेच्छाई मासवाग्मासिकादिकम् ( vide n. 1358 above ), *वि. १*, p. 390 says: केचित्त्रिषा दत्तममप्याहुस्तस्मिन्मास आद्वयानि परिणयन्ति मास-वाग्मासिकादिकमिति । ... आदिशब्देन कदाचिदसंपिण्डनमप्युक्तं यत्र पाद आद्वयानि दृश्यन्ते । अतो मास्यस्तु पर्त ।

1428. पिण्डदानमेव च द्वयोरेकं निमित्तमनुवदति दृढस्थितिः । यथा पितृधने स्वाम्यं तस्या सत्त्वमि यन्मुपुः । तयोः तदुत्तरोपीष्टे मातृमातामहे पते । यथा येन दौहित्रदेवपिण्डेन दुहित्या पितृधनधिकारिणी तथैव तेनैव पिण्डदानेन दुहितृमुत्तरोपि मातामहपते स्वामी सत्त्वमि पित्रादिषु । द्वायभाष्य XI. 2. 17 p. 180.

1429. तस्माद्यथा यथा सुतधनस्य तदुपयुक्तं भवति तथा तथाधिकारकर्मोत्तरापीयः । ... एवं च सर्वमोक्तरीत्या सुतधनस्य सुतार्थमनुसंधेयमुक्तकमेव । द्वायभाष्य XI. 6. 28 and 30 p. 215. The last sentence is quoted by the *द्वायभाष्य* p. 197.

taxis to certain heirs.<sup>1430</sup> For example, the order of heirs according to the D. B. is; son, grandson and great grandson; widow; daughter; daughter's son; father; mother; full brother; half brother; full brother's son; half brother's son. But the persons entitled to perform the śrāddha of the deceased in order are somewhat different. In fact the order of succession does not strictly follow in any school the order of those that are called *śrāddhādhikārins*. The order of those who are entitled to offer śrāddha to a deceased separated male (*śrāddhādhikārin*) given in most works is as follows; son (aurasa or adopted); grandson; great-grandson; widow; married daughter; unmarried daughter who has succeeded to the deceased's wealth; daughter's son who succeeds to the wealth; full brother; half brother (son of a different mother); full brother's son; half brother's son; father; mother; daughter-in-law; full sister; half sister; full sister's son; half sister's son; paternal uncle; paternal uncle's son; other gotraja sapindas; sodaka; any gotraja; cognates such as maternal grandfather, maternal uncle, maternal uncle's son (i. e. the bandhus of the three kinds in order); pupil; son-in-law; father-in-law; friend; any brāhmaṇa who takes a brāhmaṇa's wealth or king who takes by escheat. Vide *Nirṇayasindhu* III uttarārḍha pp. 382-386, *Dharmasindhu* III uttarārḍha pp. 368-369, *Śrāddhāviveka* p. 48. If the principle of the capacity to offer or of the offering of piṇḍas regulating the right to succeed is to be strictly and logically followed, there is no reason why the mother or the paternal grandmother should succeed immediately after the father or the paternal grandfather respectively. Her recognition in the D. B. school is due to the fact she is expressly mentioned in *Manu* as an heir. Similarly in the rules about the succession to re-united coparceners, the school of D. B. gives preference to re-united co-parceners and does not apply the theory of spiritual benefit. Further the *Dāyatattva* says that all that is required is the capacity

1430. Vide *Akshaya Chandra v. Haridas* 35 Cal. 721 at p. 726 and *Nalinaksha v. Rajnikanta* 59 Cal. 1392 for the propositions that the doctrine of spiritual benefit cannot be applied consistently in all cases such as the succession of females to males, the succession of saminodakas &c. and that in cases not contemplated by *Jimṣtavāhana* or his followers is the Bengal school, the principle of propinquity and of natural love and affection should be followed. The *Dāyatattva* p. 193 after quoting Br. cited above observes that both the superiority of piṇḍas offered and nearness of line are to be considered in inheritance, 'विशद्वृत्तसम्बन्धतत्त्वादेन आसन्नजननत्वात् तस्येन च धनेष्वधिकारी'.



to receive pinda or the capacity to participate in the pindas offered by others and not the actual offering of pindas. For example, if a man performs śrāddha for his ancestors, then dies, but no one performs his sapindana and therefore he does not participate in the pindas given to his ancestors, still his wealth will be inherited on the principle of religious efficacy.<sup>1431</sup> Owing to considerations of space it is not possible to go into great detail about the several propositions established in relation to the theory of religious benefit as the determining factor in matters of inheritance. But the following propositions may be set out in one place:

(1) Benefits are conferred on the deceased by means of the *ekoddista* or the *pārvaṇa śrāddha*. The capacity to perform the *pārvaṇa śrāddha* is not the sole ground on which rests the right to inheritance to a man. Therefore the widow, the daughter and the pupil were recognized as heirs though they perform only the *ekoddista śrāddha*. But those who are competent to perform the *pārvaṇa śrāddha* have a preferable claim to those who are entitled to perform only the *ekoddista śrāddha*. Therefore the male issue of a deceased person are preferred to a widow or daughter.

(2) Spiritual benefit is conferred on a man by presenting pinda directly to him or by offering pinda to one or more of his paternal ancestors to whom he presents pindas during his own life time and with whom he participates in pindas offered after his death by others or by offering a pinda to one or more of his maternal ancestors (mother's father, mother's father's father and the latter's father) to whom he was bound to offer pindas during his life (but with whom he does not participate in the pinda offered to them<sup>1432</sup>).

(3) The pinda offered to a man himself directly is of greater efficacy than the pinda offered to a paternal ancestor in which he participates after his own death as one of the Manes. Therefore the son, grandson or great-grandson is preferred to every one else. The brother offers a pinda to the father and two more

1431. अथ यः कस्य पिण्डम् दत्त्वं भुक्तः प्रत्यक्षापानपितृभातः स कथं सपिण्डः, एक-पिण्डदातृत्वभोजनमूलकसम्बन्धमाणादिति चेन्नयोग्यतयेति वृत्तः । योग्यताप्रयोजकं च सामान्यशास्त्रविदवत् । सुद्धित्तम p. 397.

1432. पत्न्य जीवत् सपिण्डदाता स भुक्तः सपिण्डनात् सपिण्डभोक्ता । एवं च सति भ्रातृपिण्डः पुत्र्यः पूर्वेषां जीवत् पिण्डदाता स भुक्तः सर्व सपिण्डनात् सपिण्डभोक्तृ च । वृत्तभात XL. 1. 38 p. 163, सुद्धित्तम p. 396.

paternal ancestors of the deceased in which he (the deceased owner) only participates after his death. Therefore the brother is postponed to the son or daughter's son (who offers a pinda directly to the deceased himself as his maternal grandfather).

(4) The pindas offered to paternal ancestors have greater efficacy than those offered to maternal ancestors (hence a brother's son is preferred to a sister's son because the former offers pindas to his own and the owner's paternal ancestors, while the latter offers pindas to his maternal ancestors who are the paternal ancestors of the owner).

(5) The pinda offered to the owner's father is of greater efficacy than that offered to the paternal grandfather or great-grandfather. Therefore a brother's son or grandson is preferred to a paternal uncle.<sup>1433</sup> Hence it should follow that all agnatic and cognatic descendants of the father of the deceased would be preferred to any descendant of the paternal grandfather or great-grandfather.

(6) Where the number of pindas offered by two claimants is the same, he who offers a pinda to the nearer ancestor is to be preferred.

The *Dāyabhāga*, starting with *Baud. Dh. S.* (I 5. 113 ff.), *Manu* (IX. 186-187) and the *Matsyapurāṇa* elaborates its own definition in the following<sup>1434</sup> way. A man's son and a daughter are both born in the family. The daughter's son springs from the family of his maternal grandfather but he belongs to another gotra (viz. his own father's gotra); similarly, a man's sister (i. e. father's daughter) is born in his family but her son, though mediate sprung from the deceased owner's family, belongs to another gotra (viz. that of the sister's husband); the same is true of a father's sister's son and the paternal grandfather's sister's son. A sister's son offers a pinda to the father

1433. पितृभ्यो ह्ये धनिः पितामहयजितानहयोः पिण्डवः ज्ञातुः पुत्रस्तु धनिः प्रधानं पितरमेवादाय द्रव्यद्वयस्य पिण्डदातेति स एव बलवानिति पितृप्राप्त्यर्थमधिक्येने । अत एव ज्ञातुतापि पितृभ्यस्य बाधकः सुतधनिकस्य पितुः प्रधानस्यैव पिण्डदातृत्वात् । द्वापमान XI. 6. 5-6.

1434. तस्मात्तो परमकुलोपपन्नोऽप्युच्यते सदापि सपितृद्वैविद्यादिरसकुलोपपन्नो मातुलादिर्धनितो सुतस्य पितृमातृकुलगतस्यैव धनिकपिण्डदातृत्वात् एवमपिण्डसम्बन्धेन सपितृस्य तस्य तस्याप्यधिकारार्थं वचनामिति वचनं, अतस्तथैव च विशेषार्थमनन्तरं दृष्टिं वचनं दत्तं नीयम् । इति सुतभोग्यसूतदेशविज्ञादित्रयपिण्डदातृः पितृद्वैविद्यादिरस्यैव सुतदेवमात्रमात्राद्विपिण्डदातृत्वात् मातुलादीनामनन्तरकमेवाधिकारो बोद्धव्यः । द्वापमान XI. 6. 19-20 p. 212. वचनासुदृक् कार्यं is *Manu* IX. 186 and अमन्तरः सपिण्डाद्यः is *Manu* IX. 187.



of the deceased, as the owner's father is the former's maternal grandfather and therefore he is connected as sapinda with the owner. A father's sister's son offers a pinda to the paternal grandfather of the owner, who (paternal grandfather) is the maternal grandfather of the father's sister's son. A maternal uncle is not sprung even mediately from the family of the owner, but he offers a pinda to his own father who is the maternal grandfather of the deceased owner. Therefore the maternal uncle or his son or son's son being connected with a pinda that is offered to the maternal grandfather or maternal great-grandfather respectively of the deceased owner is a sapinda of the deceased owner. A maternal aunt's son also offers a pinda to his mother's father, who is also the owner's mother's father and so the maternal aunt's son is a sapinda of the owner. The pindas offered to the maternal ancestors by him are inferior and secondary. Further, one's own mother, the father's mother, father's father's mother were associated with their respective husbands as to the pindas offered to the male ancestors and the same holds good about the wives of the maternal ancestors also.<sup>1435</sup>

The result of this way of defining a sapinda is to obliterate the distinction between a *gotraja* and a *bandhu*. Yāj. (II, 136) expressly says that a bandhu can succeed only on failure of all gotrajas and so according to him a bandhu is one who is not a gotraja. The Dāyabhāga brings in the sister's son immediately after the brother's son's son and before the paternal grandfather (i. e. even before a near agnatic ancestor) who is literally a *gotraja*, while the sister's son is literally not a *gotraja*. When the Dāyabhāga designates one's sister's son as sprung from the *kula* of the owner though not of the same gotra, he does violence to popular usage prevalent throughout India. An ordinary person in India hardly ever says that his sister's son or father's sister's son is born in his own *kula*. The Dāyabhāga only quibbles over the word 'gotraja' in Yāj. which it reads in the singular (*gotrajaḥ*) and not in the plural (*gotrajāḥ*) as the Mīt. does. Under the Mīt. the sister's son is only a bandhu and cannot succeed before a paternal uncle or his son or a paternal grand-uncle or any other gotraja. The Dāyabhāga thus gives the go-by to the text of Yāj. and shuffles in several

1435. मातादिपितृणां स्वजननी-पितृजननी-पितामहजननीष्वेव सुतपत्यान्तेषु च पदेः आहोऽन्वयेनात् । यथा—स्वेन भर्ता सह आहो माता मुहुर्दे स्वधामनम् । पितामही च स्वेनैव स्वेनैव पितामही । भवत्पत्नीमाशदीनी च पार्ष्णमाश्रातृन्नेषो निषिद्ध एव । द्वापभाग XI. 6. 3 p. 207.

cognates as very near heirs. The D. B. regards Manu IX. 186-187 as the crucial text and Yaj. II. 135-36 as only secondary.

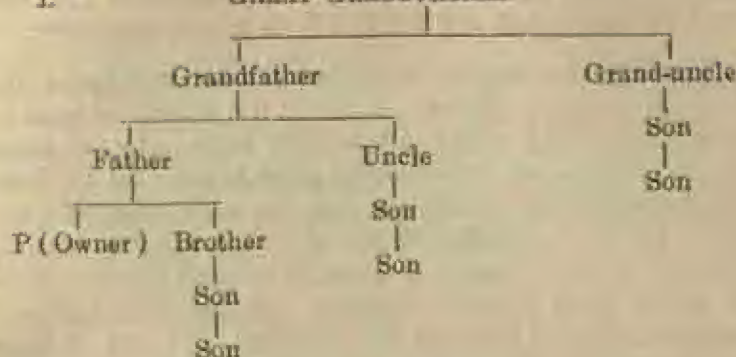
The following diagrams will illustrate the working of the theory of religious efficacy. A person is a sapinda of those to whom he is bound to offer a pinda while he is alive, of those who on his death are bound to offer pinda to him ( viz. his three male descendants, his daughter's son, his son's daughter's son and his son's son's daughter's son ) and of those who are bound to offer a pinda to the ancestors to whom he is bound to offer a pinda viz. to his three paternal ancestors and his three maternal ancestors and all of these are his sapindas. The last of these three groups has four sub-groups :—sub-group No. I comprises those who offer pindas to their own paternal ancestors who are also the paternal ancestors of the owner: sub-group II contains those who offer pindas to their three maternal ancestors who are all or some of them the paternal ancestors of the owner, to whom he was bound to offer a pinda; sub-group III comprises those who offer pindas to their paternal ancestors all or some of whom are the maternal ancestors of the owner; sub-group IV exhibits those who offer pindas to their own maternal ancestors who are also the maternal ancestors of the owner. Each of these sub-groups contains 9 persons ( as the minimum ) who are all shown in thick type. If the owner has several brothers, sisters, uncles and aunts &c. the number of possible sapindas will be much larger. All heirs in the three sub-groups II-IV will be bandhus according to the Mitākṣarā and will be postponed to gotrajas under the Mitākṣarā. It should be noticed that Jimūtavāhana brought in the father's daughter's son immediately after the father's great-grandson, the paternal grandfather's daughter's son after the paternal grandfather's great-grandson and the paternal great-grandfather's daughter's son immediately after that ancestor's great-grandson on the analogy of the rights of the owner's daughter's son and on the basis of Manu IX. 139 that the *dauhitro* ( daughter's son ) saves an ancestor in the next world just as a son's son does.<sup>1436</sup>

1436 किं तु पितृपुत्रिणीयवर्त्तनाभावे पितृदौहित्रव्याधिकारो येदृशः पौर्णिके धनिदौहित्र-  
वर्ये । एवं पितामहपितामहसन्तरेषु दौहित्रान्तायाः पिण्डयज्ञात्मनिकमेणाधिकारो  
योज्यः । दौहित्रेणैव सम्बन्धेन सन्तारयति पौत्रवदिति हेनोरपि शेषान् । स दौहित्रवत्पिताद्वि-  
दौहित्रव्यापि हृद्योऽपि पितृदानेन सन्तारयन् । दारयाम् XI. ७. ५-७ pp. 208-209.  
In *Hari Das & Bania Churn* 15 Cal. 780 at p. 796 these *plurita* were con-  
sidered and it was held that they are not to be extended to the brother's



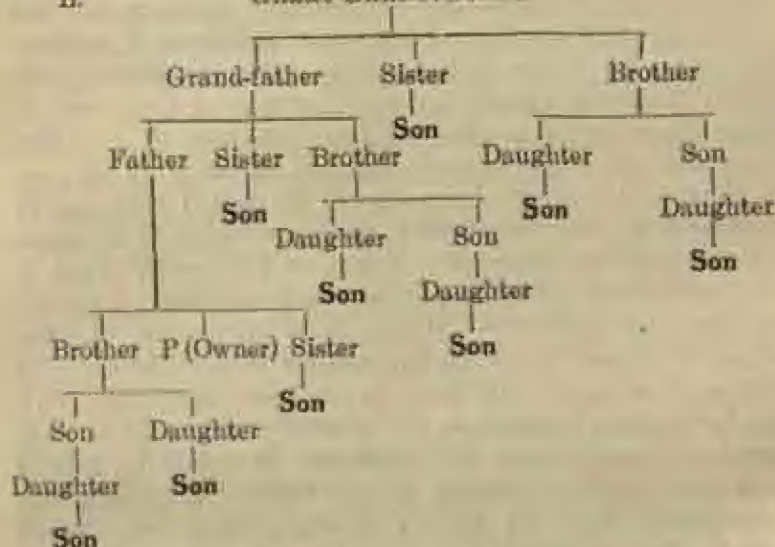
I.

GREAT-GRANDFATHER



II.

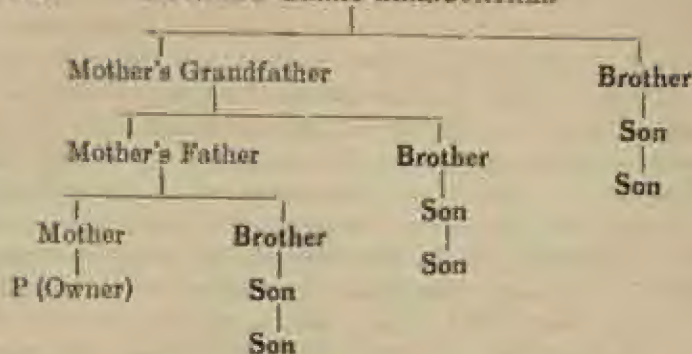
GREAT-GRANDFATHER



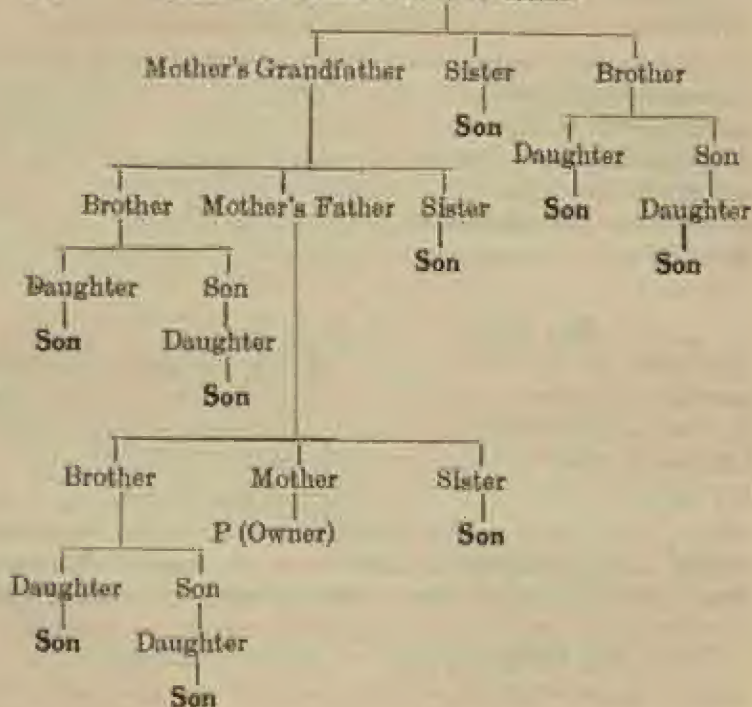
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daughter's son and that the latter though a sapinda of the owner and an heir was not to be preferred to the great-grand son of the paternal grandfather of the propounder. Sarvadhikari (T. L. L. on Inheritance, 2nd ed. of 1922 pp. 701-702) criticizes this decision as wrong, but it does not appear that the Calcutta High Court is prepared to follow him. A similar conflict arises as to several cognate heirs. For example, the son's daughter's son and the son's son's daughter's son offer pinda to the owner himself directly as a maternal ancestor (just as the daughter's son does) and therefore should be placed immediately after the daughter's son as heirs. But the Calcutta High Court would refuse to do so if the reasoning in 15 Cal. 780 be followed. Sarvadhikari (p. 709) however would place them immediately after the daughter's son.

### III. MOTHER'S GREAT-GRANDFATHER



## IV. MOTHER'S GREAT-GRANDFATHER



The D. B. says<sup>147</sup> that the word 'gotrajsh' (mas. singular) is employed by Yaj. for excluding all sapinda women (except

1437. शास्त्रवत्तवेन च विज्ञाविद्विज्ञिभ्यापि तद्वैज्जानतस्य पिण्डदानमन्तर्यक्रमेणापि कारयतिपापयै गोत्रजगद् कुलं सपिण्डकीर्णं च शुद्धमायै तस्मान्तद्वैज्जानताम् । ... अविद्यामसम्भूतानस्य द्वादिशक्तस्य सुतमोयपिण्डशुभुरमो सुतवेमसाभ्यामाद्वेपिण्डदानेन पिण्डानन्तर्भात् मातृपुत्रादिमहायै चपुत्रपदं यमुक्त्वात् भाज्यतत्त्वः । भग्नान् शु पिण्डदानमन्तर्यक्रमेण दर्शितम् । ... तस्मात् तद्वैज्जानतपिण्डशुभुरमो तद्वैपिण्डशुभुमेतुल्यदेवपिकायै ग्राह्य एव । वाचभाष XI. 6, 10, 12, 13, वाचस्पति p. 196 has a similar passage.



those that are expressly named as heirs by special texts), since they are not born or (even mediately) sprung from the family of the owner, as the sister's son or the father's sister's son that is held by it to be so sprung, that the word '*bandha*' is employed by Yaj. to include a maternal uncle and the like among heritable sapindas, since they are not sprung even mediately from the *kula* of the owner and are also not of the same gotra, that the maternal uncle and the like come in only after all descendants in the line of the paternal ancestors inclusive of the great-grandfather up to the latter's daughter's son are exhausted,<sup>134</sup> and that Mamu had not to enter into these details as its two verses (IX. 186-187) were quite enough to lead to all that has been elaborated by the D. B. about the working of the theory of religious efficacy.

It will have been noticed that no female except the five expressly mentioned can inherit under the Dayabhāga scheme and the result is that a man's own son's daughter or daughter's daughter does not take as heir, whereas a distant-relative like the father's father's sister's son takes it. The same is also the case even under the Mitākṣarā in the whole of India (except in Bombay and to some extent in Madras for which see a little later on).

A man offers only the leavings or remnants of the *piṇḍas* that stick to his hand (when offering *piṇḍas* to his three paternal ancestors) and that (leavings) are cast on *kūṣa* grass to three paternal ancestors above the paternal great-grandfather (Manu III. 216). So also the three male descendants beyond the great-grandson offer the leavings (called *piṇḍalepa*) to the owner; these three remote paternal ancestors and the three remote male descendants (spoken of as '*vibhaktadāyādā*' in Baud. Dh. S. I. 5. 114) are designated *akūlyas* by Baud., and

134B. Vide *Kaṭiṣṭha Chandra v. Karuna Nāth* 18 C. W. N. 477 where the above passages are considered at length and it is held that the paternal grand-uncle's daughter's son (though not expressly mentioned by the D. B.) is entitled to preference over the maternal uncle (who is expressly mentioned as an heir and a sapinda by D. B.), since the former offers a *piṇḍa* to the paternal great-grandfather of the owner to whom the owner was bound to offer a *piṇḍa* in which the owner participates after his own death, while the latter offers a *piṇḍa* to the maternal grandfather of the owner to whom the owner was bound to offer a *piṇḍa* in which, however, the owner did not participate after his death.

the D. B.<sup>140</sup> (XI. 1. 38). According to D. B. sakulyas succeed after all sapindas are exhausted. Just as a man participates after his death in the pipdas offered to his paternal ancestors so he would participate in the leaveings also offered to his paternal ancestors from the 4th to 8th by their descendants (from 4th to 6th). The D. B. remarks that this difference between sapindas and sakulyas is made only in the matter of inheritance. But in the matter of the periods of mourning both the sapindas (strictly so called in the section on inheritance) and the sakulyas are designated sapindas by Manu (V. 60) and by the Mārkaṇḍeya-purāṇa (28. 4).<sup>141</sup> According to Manu IX. 187 sakulyas succeed on failure of sapindas, while Viṣṇu Dh. S. (XVII. 9-11) prescribes<sup>142</sup> that on failure of bandhus, sakulyas succeed. It appears that Viṣṇu employs the word bandhu in the sense of sapinda. Nār. (dāyabhāga, 51) states that on failure of daughters and sakulyas, bandhavas and persons of the same caste succeed. Here it appears that sakulya and bandhava are employed in the sense of gotraja and bandhava as done in Yaj. The Bālabhātṭi says that gotraja and sakulya are synonymous. The Dāyabhāga appears to be somewhat inconsistent in its references to sakulyas. In XI. 6. 15 and 23 it includes samānodakas among sakulyas, while in XI. 6. 21-22 it defines sakulya as stated above. The Mit. on the other hand comprehends the sakulyas of the D. B. (as defined in XI. 6. 21) under its gotraja sapindas.

1450. विमलदासविन्द सकुलपात्राचरते । ... सपिण्डाभावे सकुरवाः । पौ. प्र. च. I. 3. 114-116; एतेन इत्यपिपितामहावृत्तवत्त्वः पूर्वपुरुषाः पतिभ्यस्तुभ्य वसुधायन्तानां वृत्तः एकपिण्डमोक्तुमाश्रयात् विमलदासविन्दः सकुलपात्राचरताचरते । दासनाम XI. 1. 38 p. 163; तत्रापि धतिपण्यद्विरासत्वेन पिण्डोपेक्षारतं तेषामनुकारकत्वात् अत्राभावे च इत्य-  
मपिनाहमस्मतिः । सुशब्दपिण्डोपेक्षमप्येवम् । इत्यपिपितामहादिभ्यः पिण्डदावृत्ताः । एवंविध-  
सकुलपात्राभावे च समासोक्तः । सकुरवापेक्षेनोपासा मान्याः । दासनाम XI. 6. 22-23 p. 215.

1440 पिबन्नेनमुल्लभ्यान्धे पिताम्पिताममात् । ननु पुत्रास्त्वसतो दयमानश्च सप्तमः ।  
इत्येवं मुनिभिः पोष्यः सम्भवतः सामर्थीक्यः । मार्कण्डेयपुराण २८. ४-५ quoted by  
दादभाण XI. i. 4). The वाङ्मुराण (220. 83-86) reads 'लेदममग्निधनञ्चान्ये  
पितामात् ... सामर्थीक्यः'.

1441. तदभावे भ्रातृधर्माणि । तदभावे वन्धुमानि । तदभावे सकुलधर्माणि । विष्णुधर्म-  
सूत्र 17.9-11. This is the reading of उपरान्ते p. 741, वि. र. p. 395. The  
म. म. p. 330 says that in Visnu bandhu and sambhya stand for bhāgīṇa and  
bhagotra. Some words like ब्रह्मवत् (p. 168), द्वापभाग (XI. 1. 3, p. 151), च.  
सर्वज्ञ p. 142 read 'तदभावे सकुलधर्माणि तदभावे वन्धुमानि'. तत्र च पितृसन्तानाभावे  
पिताम्नी । पितामहाः पितृपास्तब्रह्मचर्येण प्रयत्नाजः । पितामास्तसन्तानाभावे वषिताम्नी  
पितामहाः दुष्टास्त्वान्नैकचित्तियेन सासथमास्तान्मेधायां सपिण्डानां धनग्रहणं वेदितव्यम् ।  
विश्व. ०० वा. II. 136.



The Mit. states that the gotrajas are the paternal grandmother, the sapindas and samānodakas of the deceased. It then proceeds to say that the paternal grandmother is the first among *gotrajas*, then comes paternal grandfather. It paraphrases the word *gotraja* (born in the gotra) as *samānagotra* (having the same gotra) and then proceeds, 'on failure of the father's line (*samāna*) the heirs are the paternal grandmother, the paternal grandfather, the paternal uncles and their sons in order: on failure of the paternal grandfather's line the paternal great-grandmother, the paternal great-grandfather, his sons and son's sons inherit. In this manner must be understood the succession of sapindas belonging to the same gotra (as the deceased) up to the 7th degree'. According to the Mit. sapinda relationship extends up to the 7th degree (reckoned from and inclusive of the owner). Therefore the owner's sapindas for purposes of inheritance according to the Mit. are the owner's (1) 6 male descendants in the male line, (2) 6 male ascendants in the male line and the wives of the first three of them (that are expressly so declared, viz. mother, paternal grandmother and paternal great-grandmother) and probably the wives of the next three also; (3) the six male descendants of each of his six male ascendants in the collateral male lines. Besides, a man's wife and daughter are treated as his sapindas and the daughter's son, though a *bhinnagotra sapinda*, is placed high among the *gotraja sapinda* heirs.

Even under the Mitākṣarā in the whole of India (except in the Bombay and Madras schools), no women succeed as *gotraja sapindas* (except five expressly named and cited above on p. 713). In Bombay the sister (full or half) is brought in as a *gotraja* by the V. Mayūkha (though the Mitākṣarā is entirely silent) and placed by it immediately after the paternal grandmother. It relies on the general words of Manu IX. 187 and of Br. (quoted above on p. 733) that to the nearest person in blood the inheritance goes and then proceeds:<sup>142</sup> 'She is also a *gotraja* as being born in the gotra in which her brother (the deceased owner) was born. She is, however, not a *sagotra* (of the deceased brother), but being a *sagotra* is not mentioned here (in Yaj.) as the condition that leads on to the taking of the wealth of the deceased'. Here the V. Mayūkha plays upon the word *gotraja* and takes its literal meaning. But that is a specious argument. The

142. तदुत्तरे भगिनी । ... तस्या यदि प्रापुमोव उत्पन्नत्वेन भोजनजातिविशेषाच्च संप्रोक्ता इति मतिः । न च साध प्रत्यक्षपरोक्षकत्वेनोक्तः । पृ. मयूख p. 143.

widow and mother are not gotrajas (in this sense of being born in the gotra) but on marriage they enter the gotra of their husbands and become sagotra. Further, on the same reasoning, a son's daughter, brother's daughter, father's sister and other women born in the family of the deceased will become his gotrajas (though not sagotras because on marriage they pass into the gotra of their husbands). But these other women are not expressly recognised even by the V. Mayūkha as gotrajas. Even though she was not mentioned in the Mit. the sister has been recognised as a gotraja sapinda by the Bombay High Court in parts of the Bombay Presidency where the Mit. is the paramount authority. The order of heirs under the Mit. would be as follows:—Full brother, half brother, full brother's son, half brother's son, paternal grandmother, sister (full being preferred to half), paternal grandfather. According to the V. Mayūkha the order is slightly different, viz. full brothers along with sons of full brothers that are dead, full brother's son, grandmother, full sister, halfbrother, halfsister, paternal grandfather. The unmarried sister had been recognized as entitled to a share when brothers came to a partition and they had to provide for her marriage expenses. Vide above pp. 619-620 and Nār.<sup>143</sup> (dāyabhāga, 13), Visnu Dh. S. 18, 35, Manu IX. 118, Yaj II. 124. In Madras the sister had been recognized as a bandhu. The Legislature has intervened and laid down (Hindu Law of Inheritance Amendment Act II of 1929) that in territories governed by the law of the Mitākṣarā and in respect of the property of males not held in coparcenary and not disposed by will, a son's daughter, daughter's daughter, sister and sister's son shall be entitled to rank as heirs in the order specified in the Act next after a father's father and before a father's brother. The first three of these were before this Act not at all recognized as heirs in the whole of India except in Bombay (where the sister was recognized as a gotraja sapinda and the first two as bandhus) and except in Madras (where the first three were recognized only as bandhus). The sister's son was given a very high place as a sapinda under the Dāyabhāga and was treated as a bandhu elsewhere in India. This enactment does not affect the Dāyabhāga scheme and so the three females mentioned in the Act are not heirs even now under the Dāyabhāga. The sister's place as settled by Bombay decisions is after the paternal

1443. ज्येष्ठपुत्रोऽधिको ज्येष्ठः कनिष्ठपुत्रः स्मृतः । सन्तानमात्रे ज्येष्ठः स्मृत्यन्ता भगिनी तथा ॥ नारदः ( दायभाग 32 ).



grandmother and before the paternal grandfather, while the above Act places her after the paternal grandfather. In *Bai Mahalaxmi v. The Deputy Nazir* 45 Bom. L. R. 434 it has for this reason been held that the Act does not apply to the Bombay Province. If it be held that the Act does apply to Bombay (except as to the sister), then the same Act will have to be deemed to be laying down two different orders of succession as to the same four heirs in different provinces, which, to say the least, is not a reasonable or desirable way of interpreting statutes (just as in the case of texts).

Some difficulty is caused by the use of the word *amānu* in the Mit. as regards the father's, grandfather's and great-grandfather's line. It has been seen above (p. 731) that the compact series ends with the brother's son (father's son's son i. e. after two descendants of the father) according to the Bombay High Court, while elsewhere in India it is supposed to end with the brother's son's son (i. e. after three descendants of the father). The Mit. expressly mentions only two descendants in the grandfather's and great-grandfather's line. The general rule is that sapinda relationship extends to six descendants of each line (excluding the man or ancestor from whom the counting is made). The further general rule gathered from the meagre words of the Mit. is that the nearer line excludes the more remote (e. g. the grandfather, his son and grandson are expressly mentioned by the Mit. as taking before the great-grandfather, his son and grandson). The question is whether the 3rd, 4th, 5th and 6th descendants of a nearer line would exclude even the 1st or 2nd descendant of a remoter line e. g. whether the great-grandson of the grandfather would take before the son or grandson of the great-grandfather or whether the 6th descendant of the grandfather would take before the son of the great-grandfather. There were three views<sup>144</sup> on this point.

144. Vide *Buddha Singh v. Lalla Singh* L. R. 43 F. A. 205 pp. 230-24 for the three views and their expounders. The F. C. overruled the first view and held (p. 227) that the descendants in each ascending line up to the fixed limit should be exhausted at any rate to the third degree before making the ascent to the next line in order of succession. गोत्रयशब्देनैव ज्ञातु-  
तस्तुतयोर्मिदं नान्यतमेति दुष्प्रहृतयोरेतदिदानीमन गोत्रयेषु पितामहाद्विषु तदप तदप सप्ततौ  
पितुसन्ततमिषु त्रयोरेव दुष्प्रहृतयोर्मिदमितिज्ञातुतार्थत्वात् । स्मृतिच. II. p. 300. In Sm.  
C. II. p. 300 the passage as printed is somewhat corrupt. The Subodhīśī also says 'पितुसन्तानो ज्ञातुतस्तुतयोर्मिदः' p. 74; vide मद्. पा. p. 674 also for the same view.

The first view, relying upon certain words of the Sm. C., held that after two descents in each line, one should ascend into a remoter line and after the two descendants of that line are exhausted, one should revert to the 3rd to 6th descendants of a nearer line. The 2nd view was that in each line three generations were to be first exhausted, because the word *putra* in several places in the Mlt. includes the three male descendants. The 3rd view<sup>1445</sup> was that in each line six descendants were to be exhausted before ascending to the next remoter line (as sapinda relationship extended to six degrees).

Another question is whether the widows of agnatic relations (such as the son's widow, brother's widow, step-mother or paternal uncle's widow) are included in the term '*gotrajñ*' for purposes of inheritance. Under the *Dayabhāga*, as well as under the *Mitākṣarā* throughout India (except in the Bombay School), the widows of gotraja sapindas are not heirs at all, since according to almost all writers women do not inherit except when expressly mentioned by texts. In the Bombay School the position is different. According to both the Mlt. and the *Mayūkha*, wives enter by marriage the gotra of their husbands and become sapindas of their husbands. The *Balambhatti* declared the son's widow to be an heir even before the paternal grandmother and includes females also in the word *gotrajñ*. When *gotraja* was rendered as *sanānagotra*, the term became wide enough not only to include those born in the gotra but even those who entered the gotra by marriage. Besides, it was argued that if the paternal grandmother or paternal great-grandmother succeeded as a gotraja there was no reason why other widows of other gotrajas should not succeed. From the earliest days of British rule the gotraja sapindas (such as the son's, brother's, paternal uncle's widows) have been recognised as heirs in the Bombay Presidency. They take only a limited estate like the owner's widow or mother or

1445. The third view was propounded by Telang J. in *Rachava v. Kalingappa* 15 Bom. 716, which is referred to by the P. C. in 42 I. A. 208, at pp. 220 and 226. The P. C. do not dissent from Telang J. but do not expressly approve of his view as it was not necessary to do so in that case, where the question was whether the great-grandson of the grandfather of the deceased was to be preferred to the grandson of the great-grandfather and it was held by the P. C. that he was to be preferred. The 2nd view appears to be supported by the words of Apararka p. 743 'एवं ज्ञात्वा सर्वज-सम्पत्तिं इति पितृसमन्तौ जपः सत्यासुताः सपिण्डाः । एवं पितृसहसन्तौ पतितामहसन्तौ च । एवामभावे पित्रादिवपरप ने प्रवीक्षातेका पुत्रादिवपं सपिण्डाद्गृह्यहकम् ।'



paternal grandmother. They are recognized rather on the ground of 'positive acceptance and usage' by the Privy Council than on the ground of any texts<sup>1446</sup>. They occupy the same place as their husbands, succeed after the compact series, the sister and half-sister and only after all the male gotraja sapindas (up to the 7th degree inclusive of the ancestor) properly belonging to the line to which their husbands belonged; e. g. the son's widow would succeed before the brother's son's<sup>1447</sup> son, the brother's widow or step-mother would succeed after all the six male descendants of the husband's father, but before the father's father, paternal uncle or his son &c. These widows of gotraja sapindas succeed before any bandhu. Since Act XVIII of 1937 a man's own widow, his predeceased son's widow and the widow of a predeceased son's predeceased son succeed along with his son or sons throughout India.

*Samānodakas.* According to the Mit. gotrajas are either sapindas or samānodakas. The word 'samānodaka' has a technical meaning. Acc. to Manu V.60, 'the sapinda relationship ceases with the seventh person; the relationship of samānodaka<sup>1448</sup> ends when birth (in the family) and name are no longer known'. This occurs in the chapter on impurity. The Mit. declares that the samānodakas comprise males seven generations beyond the sapindas or all males (beyond sapindas) whose birth (in the same family as that of the deceased) and name are known. It quotes a text of Bṛhan-Manu, 'the sapinda relationship ceases with the seventh person; the relation of

1446. Vide *Lallubhai v. Manabharbai* 2 Bom. 388, 447, which went up to the Privy Council as *Lallubhoy v. Cassibai* L. R. 7 L. A. 212 at p. 237. In *Gandhi Maganlal v. Bai Jeeab* 24 Bom. 192 (F. B.) at p. 212 it was observed: 'The grandmother's claim was indeed found so strong that it served to help the widows of collateral sapindas to be also recognized as gotraja sapindas'.

1447. Vide *Appaji v. Mohanlal* 34 Bom. 564 (F. B.) for the daughter-in-law being preferred to a brother's grandson; *Kashibai v. Moreshwar* 35 Bom. 326 (where the paternal uncle's grandson was preferred to a paternal uncle's widow because he was a male gotraja sapinda of the same line within seven degrees, to which the widow's husband belonged); *Basangarda v. Basangarda* 39 Bom. 87 where the brother's widow was preferred to the paternal uncle's son (as she belonged to a nearer line).

1448. सप्तपञ्चातु दृष्टे सप्तमे विनिर्वाणे । सम्मानोदकभावनतु सम्मानान्तरव्युत्पन्ने ॥ मनु V. 60 ; अपाह बृहन्नसु । सपिण्ड ... वस्ते । सम्मानोदकभावनतु निर्वर्तेता चतुर्वर्णात् । जन्मानाम्ने; मधुमेरेके तस्यरे गोत्रमुच्यते । मिता. on पा. II. 136. These verses are attributed to बृहस्पति by मय. नि. p. 434

*samānodaka* ceases after the 14th; according to some it extends as far as the memory of name and family (or birth) reach; the *gotra* is said to extend up to that'. The *samānodakas* comprise the 7 ascendants of a person after the great-grandfather's great-grandfather, the 13 descendants of these seven ascendants, the 7 descendants after the 6th descendant of his 6 male ancestors from his own father; and descendants of himself from the 7th to the 13th. The Privy Council have ruled<sup>1449</sup> in a recent case that, according to the *Mitākṣarā* school, *samānodaka* relationship does not extend beyond the 14th degree (from and inclusive of the common ancestor of the claimant and the *propositus*).

The word '*samānodaka*' literally means 'those who offer to or receive water from the same person'. The word is employed by Vas.<sup>1450</sup> 17, 79. But in the law of inheritance it has a technical meaning as stated above.

*Bandhu* (cognate).<sup>1451</sup> It has been seen above (on p. 742) how the *Dāyabhāga* shuffles cognates among the *gotrajas*.

1449. Vide *Atmaram v. Bafirao* L. R. 63 1. A. p. 139 where it was said that in the event of a conflict between the ancient text writers and the commentators the opinion of the latter prevails in the provinces where their authority is recognised on the ground that the commentators only voiced the usage of the time and of the country in which they lived. The case of *Bai Devkore v. Anuritam* 10 Bom. 372 where the word *samānodaka* was interpreted to include any agnate without any limit of degree was not overruled but was distinguished on the ground that it was governed by the law of the *Vyavahāra-mayūkha* which quotes only Manu V. 60 and does not quote *Bṛhas-Manu*.

1450. अथ ऋषि समानार्थं जन्मपितृव्योद्भूतगोत्राणां दूतः दूतौ न तृतीयः । वसिष्ठ 17, 79.

1451. The word '*bandhu*' is a very ancient one and has been used in various senses throughout the ages. In Rg. I. 113, 2 Night and Dawn (*Uṣas*) are called *samānabandhū* [bound together or having a common relative]. In Rg. I. 154, 5 (*urnakramasya sa hi bandhur-ātthā*) the word appears to be used in the sense of 'friend'. In Rg. I. 164, 33 '*nābhi*' and '*bandhu*' are employed one after another. The sage *Vasiṣṭha* tells *Aśvina* (Rg. VII, 72, 2) that their mutual friendship is ancestral and their relation is common (*yanvortī nah saṅhyā pītryaṇi samāno bandhurata tasya viltam*). Vide also Rg. V. 73, 4, VIII, 21, 4, VIII. 100, 6, IX. 14, 1. In the *Atharvaveda* V. 11, 11 *Atharvan* is said to be the *bandhu* of the gods and *Varuṇa* is said to be both the friend (*saṅhyā*) and *bandhu* (relative) of the sage. In *Atharvaveda* VI. 13, 2 and VI. 54, 3 the same ball verse occurs, 'whoever



literally so called. According to the Mīl. bandhus are sapindas of the deceased belonging to a different gotra. Bandhus succeed under the Mīl., the V. Mayūkha and all other authorities except those of the Dayabhāga school only on failure of samānodakas (or sodakas). It will have been noticed from the discussion above that gotrajas, whether sapindas and samānodakas, are all agnates (and in some cases their wives) i. e. persons related to the deceased by unbroken male descent. The bandhus are persons related to the deceased through one or more females. The basic texts on the inheritance of *bandhus* are three verses attributed to Vṛddha-Satātapa

(Continued from the last page)

whether our relative or not attacks us' *subandhusśasubandhino yasmān-abhīdātati*). In the Vāj. S. IV. 22 (*some samasvāme to bandhuh*) the poet prays that the god may find delight in them and find in them his bandhu. Among sūtras Gaut. IV. 3 and Vācābhāṣya 9 speak of pitṛbandhus and mātṛbandhus (persons related through the father and mother). In Yāj. the word *bandhu* or *bāndhava* occurs many times and has at least three senses viz. relative in general (in I. 53, 108, 113, 116, 220; II. 144, 280; III. 11, 239), agnate (II. 294), cognate (II. 133, 149, 264). Manus IX. 138 and XII. 79 employ the word *bandhu* in the sense of relative in general. The Āp. Dh. S. I. 7. 21, 8 and II. 5. 11, 16 and Gaut. 14, 18 employ the word '*yonisambandhu*' for persons connected through a female. On the other hand Pāṇini V. 3. 23 (*ṛto vidyāyonisambandhebhyah*) appears to employ the word in a general sense viz. 'blood relation' (whether paternal or maternal). Another word frequently used from Vedic times is '*jāti*' which generally means 'agnate' or 'relative'. Vide Rg. X. 60. 14, X. 117. 9. In the Atharvaveda IV. 5. 6 a man desirous of a clandestine intercourse with a woman prays '*scapāntasyai jātayah scaptrayam-abhito janah*'. In I. 1. 33 Pāṇini appears to use the word '*jāti*' in the sense of agnates '*स्वमज्जातिपनास्यपाम्*'. In Gaut II. 43, Āp. Dh. S. I. 3. 10. 3 '*jāti*' occurs and is explained by Haradatta as agnate relations. In Manus III. 31 (*jnātībhyo draviṇam dattā*) *jāti* appears to mean paternal relations. In Manus III. 264, IV. 179, Yāj. II. 149 *jāti* is distinguished from *bāndhava* or *bandhu* and so means 'agnates'. Two other words are '*sajāta*' and '*sanābhi*'. The first occurs in the Tai. S. I. 6. 2. 1 and I. 6. 10. 1 (*ugrohaṁ sajāteṣu bhūyāsam*) and in the Atharvaveda I. 9. 3, III. 6. 2; VI. 5. 2 and means 'agnates or kinsmen'. The word *sanābhi* occurs in Rig. IX. 89. 4 and means also the same thing as '*jāti*' in Āp. Gr. VII. 20. 13, Manus V. 72, Br. (S. B. E. 33 p. 310 verse 11), but in the Nirukta IV. 21 and in Kāi (q. by Aparāṅka pp. 669-670) the word *sanābhi* is used in a wider sense (as including paternal and maternal relations). The Amarakośa gives *apīṇja* as a synonym of *sanābhi*. नारय संनद्धा गर्भा जायन्ते इत्यनुष्ठुप्समादेव ज्ञानी सनाभय इत्याचक्षते सनाभ इति च । निरुक्त IV. 21. शीरसापी (on असरकोश) explains सनापी नाभिर्नद्धा मे सनाभय and refers to पाणिनि VI. 3, 85.

or Baudhāyana. They may be translated as follows: 'The sons of one's father's sister, the sons of one's mother's sister and the sons of one's maternal uncle—these are to be known as *ātma-bandhus* (one's own bandhus); the sons of one's father's father's sister, the sons of one's father's mother's sister, the son's of one's father's maternal uncle—these are to be known as one's *pitr-bandhus* (father's bandhus); the sons of one's mother's father's sister, the sons of one's mother's mother's sister, the sons of one's mother's maternal uncle—these are to be known as the *mātṛ-bandhus* (mother's bandhus).<sup>1452</sup> The Mit. states on this text that bandhus are of three kinds—viz. *ātma-bandhus*, *pitr-bandhus* and *mātṛ-bandhus* and that *ātma-bandhus* succeed before *pitr-bandhus* on account of their greater propinquity to the deceased and *pitr-bandhus* succeed before the *mātṛ-bandhus*.<sup>1453</sup> The treatment of the rights of bandhus in the Mit. and other commentaries and digests is very meagre. This has led in modern times to a bewildering mass of case law on the inheritance of bandhus.

The first question is whether the enumeration of *bandhus* in the verses quoted is exhaustive or only illustrative. The V. P. expressly<sup>1454</sup> states that if the enumeration be held to be exhaustive absurd results would follow. For example, a maternal uncle's son is expressly named as an *ātma-bandhu* in the verses quoted above, but his father (the maternal uncle), being not mentioned, would on that hypothesis be excluded. Therefore it was held by the Privy Council in a very early case<sup>1455</sup> that the enumeration of bandhus is only illustrative, that the maternal uncle though not mentioned is a nearer

1452. आत्मपितृव्यसुः पुत्रा आत्ममातृव्यसुः सुताः । आत्ममातुलपुत्राश्च पित्रेवा आत्म-  
बाण्डवाः । पितुः पितृव्यः । पुत्राः पितुर्मातृव्यसुः सुताः । पितुर्मातुलपुत्राश्च पित्रेवा मातृ-  
बाण्डवाः । मातुः पितृव्यः । पुत्रा मातुर्मातृव्यसुः सुताः । मातुर्मातुलपुत्राश्च पित्रेवा मातृबाण्डवाः ।  
q. by the निता. on घ. II. 136. These are ascribed to श्रीधरज by the घ. म. III. p. 528 and व्य. नि. p. 455 and to इन्द्रशक्तज by मद्. व. p. 674 and बादम्भडी.

1453. तत्र चान्तरङ्गत्वात्पदमालम्ब्यचो धनमावस्यद्भावे पितृव्यवत्तदभावे मातृ-  
व्यवत् इति क्रमो वेदितव्यः । निता. on घ. II. 136. Almost the same words occur in the मद्. व. p. 674.

1454. योमीश्वरव्यनेपि यन्पुत्रदेन मातुलाशुपालक्षणमपथा मातुलादिनामग्रहणमेव  
प्रसङ्गेनेति तदुवाचार्णं प्रवापिकारस्ततः प्रवासजानां नेषामेव स नेति महद्दोषोचितमप्ययेत ।  
व्य. व. pp. 530-531.

1455. Vide *Gridhari Lal v. The Bengal Government* 12 Moore's I. A. 448.



bandhu and would succeed in preference to his own son who is expressly mentioned. In *Halakubrahmanya v. Sabbagga* 65 L. A. 93 it was held that under the Mitākṣarā the principle of proximity of blood relationship applies to the succession of bandhus, that in determining which of two ātmabandhus is entitled to succeed nearness of degree and not religious efficacy is the proper test to apply, that when the ātmabandhus are equal in degree the test of religious efficacy may be applied to determine preference and that the maternal uncle of the deceased is entitled to preference over the deceased's father's half sister's son. This was followed in *Viranganda v. Yellappa* 1 L. R. (1943) Bom. 259 (F. B.) where the mother's brother of the deceased was preferred to the father's sister's son. So also the mother's father would be a bandhu. It is strange that the deceased's own descendants through a female or the deceased's father's descendants through a female such as the son's daughter's son, daughter's son's son, daughter's daughter's son, sister's son or sister's daughter's son, are not mentioned in any authoritative commentaries or digests as his *bandhus*. Further, the bandhus enumerated in the three verses do not go beyond the 4th degree from the common ancestor. But bandhu relationship extends up to five degrees at least. There is an ancient instance of the sister's daughter's son having succeeded to a Buddhist *bhikṣu* in Cambodia (in sake 536). This would be so only according to the principles of the Mī. Vide 'Indian Cultural Influence in Cambodia' p. 55 by Dr. Bijan Raj Chatterji (Cal. 1928). All the above (such as the son's daughter's son) have been recognized by the Indian Courts as ātmabandhus entitled to inherit. In *United Provinces v. Kanhaiya Lal* 16 Lucknow 351 it has been held that the father's father's daughter's son's son would be an ātmabandhu of the deceased. In an early case<sup>1436</sup> in British India two propositions were laid down, viz. (1) there must be mutuality of sapinda relation between the deceased and the claimant (i. e. each must be a sapinda of the other) and (2) that in order that a man may be an heritable bandhu of the deceased they must be related *directly* through themselves or

1436. Vide *Umash Bahadur v. Udai Chand* 6 Cal. 119 (F. B.), 128 where it was held that a man's sister's daughter's son is a heritable bandhu but a remark was made (which was an *obiter dictum*) that the sister's daughter's son's son would not be a bandhu of the propositus because the latter was not a descendant of the grandfather of the former, his father or mother.

through their mother or father. These propositions were accepted by the Privy Council,<sup>1457</sup> which further said that sapinda relationship extends in the case of bandhus only up to five degrees. The first proposition about mutuality has some support in the interpretation put on the famous verse of Manu IX. 187 by the Bālabhāṭṭi and the Subodhini (vide above note 1418). But difficulty is created about mutuality by the unwarranted assumption that the common ancestor must be a member of one out of four families as stated by Sarvadhikari. The other propositions, however, are not supported by any texts or sound reasoning. Since the enumeration of bandhus is admitted to be not exhaustive, no sound inference can be drawn from the list of nine bandhus that a heritable bandhu must be connected with the deceased in any particular way. All that can be required is that he must be a bandhu as defined by the Mit. and connected with the deceased by having particles of the body of a common ancestor within the limits of sapinda relationship as laid down by the Mit. The limit of five degrees categorically laid down by the P. C. is not, it is submitted with great respect, based on very sure or strong foundations. The Mit. says that sapinda relationship extends to seven degrees when traced through the father, that wherever the word 'sapinda' is employed this meaning has to be understood and it extends up to five degrees when traced through the mother. Vide H. of Dh. Vol. II. pp. 454-455. What is material is

1457. Vide *Ramchandras v. Vinayak* L. R. 41 I. A. 290 (= 42 Cal. 384 at pp. 418-421) for the propositions about mutuality, relationship through himself, father or mother and restriction to five degrees. Dr. Sarvadhikari (T. L. L. p. 630ff) is not right in inferring from the nine bandhus expressly mentioned in the verses quoted above that the propositus must be a descendant of a common ancestor who is a member of the following families, viz. (1) claimant's agnate family, (2) claimant's mother's agnate family, (3) claimant's father's mother's agnate family, (4) claimant's mother's mother's agnate family. Following this opinion, it was held in *Louji v. Mithabai* 2 Bom. L. R. 842 that the great-grandson of a sister is not an heir under Hindu Law. But this decision is against the definition of sapinda given by the Mit. and is wrong. Vide *Chinna v. Palmanahha* 44 Mad. 121 pp. 128-130 for a reasoned and trenchant criticism of the requirement of mutuality laid down without any discussion or explanation in the case of 6 Cal. 119 and the views of Sarvadhikari. It is to be regretted that owing to the ignorance of Sanskrit on the part of most judges that had to decide cases of Hindu Law, the opinions of individual learned authors like Mayne and Sarvadhikari were followed without personal examination by judges of the authorities on which the opinions of authors were based.



not whether a female intervenes somewhere, but whether the person about whose sapindaship a question is raised traces his descent to a common ancestor through his father or through his mother. In the P. C. case the claimant claimed sapindaship with the deceased through his mother, and it was rightly decided that he being 6th from the common ancestor was not a bandhu. But to lay down as a universal rule that a bandhu in order to inherit under the Mit. should not be beyond five degrees from the common ancestor is against the definition of sapinda given by the Mit. itself and unduly narrows the express words of the Mit. The words of the P. C. 'the sapinda relationship, on which the heritable right of collaterals is founded, ceases in the case of the bhinna-gotra sapinda with the fifth degree from the common ancestor' (I. R. 41 I. A. 290 at p. 313) are very generally expressed and are susceptible of the interpretation that they lay down the rule of five degrees even when the claimant claims<sup>1433</sup> relationship with the deceased through his own father. Some support for the Privy Council rule that sapinda relationship ceases with the 5th

1433. Vide *Brif Mohan v. Kishun Lal* (1938) A. L. J. 670 where the Allahabad High Court held that, even when the claimant traced sapinda relationship through his father, heritable bandhu relation ceases after the fifth degree. But in *Kesar Singh v. Secretary of State for India* 49 Mad. 652 at p. 670 it is said that, though in the P. C. decision there are some observations which at first sight imply that sapinda relationship of bandhus for inheritance ceases with the 5th degree in all cases, there is nothing to suggest that the Privy Council intended to do away with the well-known distinction between bhinnagotra sapindas that claim relationship through their father and those that trace it through their mother. There is great diversity of view yet about what the P. C. meant in 41 I. A. 290. In *Sedam Nagamma v. Reddam* I. L. R. (1943) Mad. 759 (F. B.) it was held that Dr. Sarvadhikari is wrong in his restrictions of heritable bandhus to the lines he propounds, that 34 All. 698 is wrongly decided and that 49 Mad. 652 lays down the correct law. On the other hand, in *Hamant v. Vanudev* I. L. R. (1943) Bom. 465 it has been held that the P. C. means that heritable bandhus whether claiming through the father or the mother must be within five degrees from the common ancestor. Vide *Debi Das v. Mukat Bohari* I. L. R. (1943) All. p. 131 which lays down several rules deducible from an examination of numerous cases. As an illustration of how the law of the succession of bandhus is in a bewildering state, the following two cases may be read. In *Sakharan v. Rathishan* 49 Bom. 739 (F. B.) it was held that a father's sister's son is to be preferred under the V. Mayukha to the maternal uncle, but the P. C. decided in *Balsubramanya v. Subbaya* I. R. 65 I. A. 93 that the maternal uncle is entitled to preference over the father's sister's son.

degree from the common ancestor in the case of bhinnagotra sapindas may be found in the words of Mitramisra in his commentary on Yaj I 52, in the implication of the words of Kullūka<sup>1439</sup> on Manu. V, 60 and in the remarks of the Bālabhāṭṭa (p. 191). But this view is opposed to other weighty authorities such as the Nirṇayasindhu and the Dharma-sindhu.

The whole law about the succession of bandhus is in a confused state owing to conflicting decisions, but the P. C. has laid down certain propositions which may be set down here: (1) ātmabandhus succeed before pitṛbandhus and pitṛbandhus before mātṛbandhus; (2) the nearer in degree in each class of bandhus is preferable to the more remote; (3) as between bandhus of the same class, the conferring of spiritual benefit would be a ground of preference, as the Viramītrodaya invokes that principle in several cases (and so the father's half sister's son would be preferred to the mother's sister's son, though both are ātmabandhus and of equal degree); (4) if the above three rules fail, bandhus *ex parte paterna* (on the father's side) succeed before bandhus *ex parte materna* (on the mother's side); (5) the bandhu between whom and the propositus a lesser number of females intervenes is to be preferred. As a corollary of the 2nd rule it should follow that the descendants of the propositus would be preferred to ascendants and collaterals and that bandhus of the same class that are descendants of a nearer line would succeed in preference to descendants of a remoter line though of the same class. But this last proposition has not yet been settled by the Privy Council. It has been, however, held in *Debi Das v. Mukut Behari* L. L. R. (1943) All. 131 that a sister's son's son should be preferred to the deceased's cousin's daughter's son, since the former belongs to a nearer line.

For the purposes of this work it is irrelevant and unnecessary to wade through the mass of case-law on the succession of

1439. कुल्लूक after quoting the मनुस्मृत्युक्त on the question of sapindaship based on the offerings of pīṇḍas remarks, 'सगोत्रत्वे खेदं सपिण्डता । अत्र एव साङ्ग-  
विहितौ—सपिण्डता तु सर्वेषां गोत्रतः साहचर्यवती । मित्रमित्र ०० पा. 1. 52 quotes the  
smṛiti text, 'सगोत्रे खलु सापिण्डत्वं विज्ञेयं साहचर्यवत् । मित्रे तु सर्वत्र विज्ञेयं साङ्ग-  
वोरुवत् ॥' and remarks 'तेन साधुमातामहादिवदया अपि विद्यादाय धर्मसंमते न विकल्पेत ।  
माता च आरम्भमपोजकत्वशोभिता बोधया । तेन पितृमातामहादिवदयादेर्द्विदासः । एवं च  
पितृमातामहादिवधिकसमस्याः परिहृयाच्चारोपि सङ्गच्छते ॥'



bandhus. One or two matters, however, call for remark. If the theory of spiritual benefit be strictly applied, many of those who would inherit as bandhus under the Mit. system would be barred from inheritance. For example, the daughter's son's son<sup>1450</sup> or daughter's daughter's son would be a heritable bandhu under the Mitaksarā, but under the Dāyabhāga he would not be so, as he offers no pīṇḍa to the deceased or to any of the latter's ancestors. It is probably to obviate this unnatural and unjust consequence that the Dāyatattva refers to the text of Br. (quoted above in a 1419) in which the word 'bandhavaḥ' occurs, remarks that the relatives of the father and mother of (the deceased) inherit in the order of their nearness to the latter and quotes the three verses about the three classes of bandhus, indicating thereby that spiritual benefit is not the sole test, but that where it fails the test of blood relationship may be applied.<sup>1462</sup>

Very elaborate rules have been evolved by Sarvadhikari in his Tagore Law Lectures on the Hindu Law of inheritance (2nd ed. of 1922, pp. 571-640). The author devoted great industry, labour and ingenuity in evolving these rules. But one regrets to say that he raised a stupendous structure on very slippery and meagre foundations. And the pity of it is that many Judges have more or less followed his lead, though emphatic disapproval of his views, whereby the list of bandhus capable of inheriting has been very much restricted, has not been wanting.<sup>1461</sup> It is not possible to examine here in detail his reasonings and results. But the futility of much that he has evolved can and must be briefly shown. The only solid foundations that we have in the Mit. are: (1) the definition of sapīṇḍa given by it on Yaj. I. 53; (2) the remark that bandhus are bhinnagotra sapīṇḍas (as contrasted with gotrajas); (3) that the bandhus of a man may be described under three classes; (4) that those that may be called ātma-bandhus succeed before those called pīṭr-bandhus and these latter inherit before mātṛ-bandhus. It is agreed on all hands that

1450a. Vide 11 Mad. 287, 17 All. 523, 30 Mad. 406 (for the daughter's son's son's succession) and 31 All. 454, 58 Mad. 238 (for the daughter's daughter's son's succession).

1460. ब्रह्मसूक्तवाक्येन इत्यनेन पञ्चाङ्गमगमनस्यितुमावृत्तवाक्येन धर्माधिकारिणः । ते च 'आमपितुः ससुः पुत्राः ... निज्ञेया मातृबन्धवाः' । द्वावस्य p. 126.

1461. Vide *Kesar Singh v. The Secretary of State for India* 49 Mad. 652 at pp. 661, 686-89 for dissent from Sarvadhikari's views.

the nine bandhus enumerated in the verses of Śātātapa or Baudhāyana are only illustrative. Therefore, the nine bandhus expressly mentioned should not have been used to exclude any one as not a heritable bandhu, as we have not got anywhere an exhaustive enumeration. Any one who satisfied the first two requirements stated above was a bandhu. Of the nine bandhus enumerated in the verses quoted above, none is connected by direct descent with the propositus, his father or mother; but one is a descendant of his paternal grandfather, one of his paternal great-grandfather, two of his maternal grandfather, two of his father's maternal grandfather, one of his mother's paternal grandfather, two of his mother's maternal grandfather. Sarvadhikari makes a different classification of these (p. 627) viz. 'two are connected through the father, three through the mother, two through the paternal grandmother and two through the maternal grandmother'. The whole trouble has been caused by this latter grouping. Instead of emphasizing lines of direct descent, he catches hold of females who are never spoken of in ancient works in connection with tracing descent (except in the case of the mother of the man concerned). If, because the illustrations given happen to be connected only with four lines of families, persons connected with the propositus through other lines are to be excluded, there is no reason why a man's own daughter's son's son, son's daughter's son, sister's son, or sister's son's son should be held to be bandhus. They bear no close analogy to the ātmabandhus enumerated by Śātātapa. But it is admitted by Sarvadhikari that they are ātmabandhus. The terms ātmabandhu, pitṛbandhu and mātṛbandhu are mere labels or devices to show nearness and preference among bandhus. Acc. to the V. Mayūkha<sup>1462</sup> the words pitṛbandhu and mātṛbandhu are to be dissolved as *saṁghī-jatvairuṣa* compounds (pitṛḥ bāndhavāḥ

1462. मनु एतच्चादीनां सर्वेषां वृत्तनिकषितानामिव धनसम्पत्तेः बन्धुव्यापारमपि तथैवास्तु । अतः कथं पितृमातृश्च बन्धुव्यापारं धनसम्पत्तयः । पितुः पितृवन्धुः पुत्रा इत्यादि तु संज्ञा-संज्ञिसम्बन्धमात्राधि न धनसम्पत्तयाधेमिले चेदुच्यते । विनाप्येतद्वचनं पितृमातृलपितृपितृमा-द्विभिन पितृमातृबन्ध्वेभ्यो गोत्रेभ्यः सापत्तिसम्भवे संज्ञासंज्ञिसम्बन्धबोधनानर्थक्यापत्तिः । तेन बन्धुवृद्धिरव धनसम्पत्तयधिमौ पितृमातृवन्धुमापत्तेनैव त्थोच्यता । बन्धुवृद्धेनादौच्चादि-विधावधेयमेवेति दिङ् । (म. मयूख p. 144. In *Gajadhar Prasad v. Gauri Shankar* 54 All. 628 (F. B.) Mookerji J. (at pp. 723-26) prefers to dissolve the word पितृवन्धु or मातृवन्धु as either पञ्चमीवद्वन्द्व or तृतीयातद्वन्द्व (पितुः बन्धुः, विज्ञा बन्धुः) rather than as वृद्धिसद्वन्द्व. No Sanskrit authority is quoted for doing this and this view of his is opposed to the view of the म. मयूख, the सरस्वती-विदास and some other works.



or *mātuh bandhuvāḥ*) i. e. according to it *pitṛbandhus* or *mātṛbandhus* are *bandhus* of the father or mother and must also be *bandhus* of the *propositus* if they are to inherit. It is not known in what context the three verses quoted in the *Mit.* and other digests from *Śāṭtapa* or *Baudhāyana* occurred. In *Manu* V. 81 it is laid down that one should observe mourning on the death of a pupil, sacrificial priest and *bāndhavas* for the duration of *pakṣiṇī*. It is possible that the three verses only illustrate what is meant by *bāndhavas* in such a connection.

The *Bālabhāṭṭi* (*vyavahāra* p. 214) here also explains that females are included in the word '*bandhu*', although the verses quoted speak of '*putrah*' only and the Bombay and Madras High Courts have allowed female *bandhus* to inherit, though in Madras the position assigned to female *bandhus* is very much lower than in Bombay.

*Strangers as Heirs*—In default of even *bandhus*, the *Mit.* states<sup>1463</sup> that the teacher (of the *veda*) is the heir of the deceased, in default of the teacher the pupil (and relies on *Āp. Dh.* S II. 6. 14, 3) and that in default of pupil a *śiṣyamaçarin* (fellow student whose *upanayana* was performed by the same teacher as that of the deceased and who studied the *veda* under the same teacher)<sup>1464</sup> inherits. In the absence of even a fellow student the wealth of a *brāhmaṇa* was to be given to some *śrotṛiya* (a *brāhmaṇa* learned in the *Veda*) as laid down by *Gaut.* (28, 39) and in default of a *śrotṛiya* in the same village, as said by the *Dayabhāga* XI. 6. 37, to any *brāhmaṇa*, since *Manu* (IX. 188-189) says, 'in the absence of all (heirs), *brāhmaṇas* that have studied the three *vedas*, that are pure and restrained, take the wealth; in this way *dharma* does not suffer: the rule is that the wealth of a *brāhmaṇa* should never be taken by the king'. *Nār.*<sup>1465</sup> (*dayabhāga*, 51-52) is to the same effect. To the same

1463. बन्धूनामभावे आचार्यः । तदभावे शिष्यः । युवाभावे वा कदाचित्तुः सपिण्डस्तदभावे आचार्यः । आचार्याभावे अन्तेवासीरपायस्तन्वसरत्नात् । मिता.

1464. शिष्याभावे समष्ट्यचारी धनभाज् । येन सदैवस्मादाचार्यादुपनयनादपवनादर्थज्ञानमिति स समष्ट्यचारी । मिता. The word समष्ट्यचारि is derived by Pāṇini VI. 3. 66 as 'चरणे बहुचारिणि'. The *सि. को.* explains 'बहुचारिण्युत्तापदे समानस्य सः रपाश्चरणे समानत्वेन गम्यमावे'.

1465. ततः सजातिः सर्वेषामभावे पात्रयानि तत् ॥ अन्यत्र बाह्यमेवः स्वादाजा धर्मपरायणः । नारद (दावनाग, 51-52). The *मिता.* has a different verse 'नारद-भाष्यमुक्तम्—बाह्यपात्रैस्तत्कालो दापादुच्यते कथ्यते । बाह्यभावेन दातव्यमेतस्वी स्वाभ्युपेक्षया । इति'.

effect are Viṣṇu<sup>1466</sup> Dh. S. 17. 13-14, Baud. Dh. S. I. 5. 120-122 and Śaṅkha-Likhita, Devala (q. by V. R. p. 597 and V. C. p. 155). This direction of so many ancient sages has not been respected in modern times.<sup>1467</sup> Manu (IX. 189) and Br.<sup>1468</sup> (S. B. E. vol. 33, p. 380 verse 67) say that the wealth of kṣatriyas, vaiśyas and śūdras escheats to the king in default of heirs up to a fellow student. When the king takes by escheat heirless property he has to set apart a portion of the wealth of the deceased for the maintenance of his concubines and servants and for the performance of his funeral rites and śrāddhas as stated by Kāt.<sup>1469</sup> 931, Kauṭ. III. 5, Nār. (dāyabhāga, 52) provide that the king (when he takes heirless property) should provide maintenance for his women and both the Mīl. and the V. Mayākha explain that the word 'women' stands for *anarūddhastrī* (exclusively kept concubine) and not for his wives (who would succeed as heirs and then there would be no escheat), because the word 'patni' is not employed in the verse. These verses of Nār. and Kāt. are the foundation of the right to maintenance of a concubine against the heirs of the deceased paramour in modern times.<sup>1470</sup>

1466. तदन्वि ब्राह्मणपत्नये राजयामि । ब्राह्मणार्थो ब्राह्मणानाम् । विष्णुधर्मसूत्र 17. 13-14: अभाप्युदाहरन्ति (ब्राह्मणं दृष्ट्वाप्यनं विधमेकाकिनं हरेत् । न विधं विधमिषाह-  
र्षस्त्वं विधमुच्यते । एतदाहता ब्राह्मणसं तदुदीतं परमं सौमह्यं यद् ब्राह्मणस्यमिति ।  
वी. प. सू. I. 5. 120-122; this is q. by वि. र. p. 597 (except the half verse  
न विधं ). वि. चि. pp. 135-136: परिव्रजामि वा ओषिधद्वयं न राजयामि । ब्रह्म-  
दित्तिमित्ति q. by वि. र. p. 598, वि. चि. p. 156. This is quoted as पैडीनसि by  
अपराक p. 746.

1467. Vide *Collector of Masulipatam v. Garuly Venkata S. Moore's* I. A. 500 at pp. 326-327.

1468. पैडुवः अजविद्विद्वः पत्नीप्राप्तुविरजिताः । तेषां पत्नये राजा सर्वस्याधि-  
पतिर्हि सा ॥ बृह. q. by अपराक p. 746, वि. र. p. 598.

1469. अद्वितिकं राजयामि ओषिधभूषणैर्धैर्यिकम् । अगम्य ओषिधद्वयं ओषिधे-  
त्यतदुपैषेत् ॥ कात्या q. by मिता, on द्या. II. 135, परा. मा. III. p. 535, अथ. न्यूय  
p. 139; तद्वत्पत्नयद्वयं विधं पतिद्वयद्वयम् । मिता, । अद्वयद्वयं राजा हरेत् ओषिध-  
भूषणैर्धैर्यिकम् ओषिधद्वयम् । तद् वैविध्यं यद्व्येत् । अर्पशास्त्र III. 5.

1470. Vide 2 Bom. 573, 607, 12 Bom. 26 (in both Kāt. is quoted),  
26 Bom. 163, L. R. 53 I. A. at p. 163 for the concubine's right. In 48 Bom.  
203 a woman whose husband was alive was not treated as a concubine entitled  
to maintenance from the heirs of her deceased paramour, but this decision  
has been recently overruled by a Full Bench in 47 Bom. L. R. p. 3 (F. B.).



Yāj. (II. 137) states a special rule<sup>1471</sup> which is an exception to the general rule of inheritance laid down in II. 135-136 viz. '(the heirs) who take the wealth of a forest hermit, a *yati* (ascetic), a (perpetual) vedic student are in order the (vedic) teacher, a virtuous pupil, one who is looked upon as a brother and belongs to the same order'. According to the Mīl. the heirs mentioned are to be taken in the reverse order of the words of the text i. e. the *śārya* (who is mentioned first among the three heirs) is to be taken as the heir of the last of the three mentioned in the first half of the verse, so that the teacher, good pupil and the person looked upon as brother are respectively the heirs of the perpetual student, the ascetic and the forest hermit. According to the *Dayabhāga* also the reverse order has to be taken, but it says that the wealth of the forest hermit, *yati* and perpetual student is taken respectively by one looked upon as brother, a worthy pupil and teacher, but that in the absence of these, any one who is in the same *śārama* as the deceased may take it. According to the *Madanaratna*<sup>1472</sup> the order of heirs is the direct one, that is, the teacher, good pupil and accepted brother take the wealth of the forest hermit, ascetic and perpetual student, since the *Viṣṇu Dh. S.* (17. 15-16) expressly says so. The Mīl. adds that a *brahmachārin* is of two kinds viz. perpetual (*naiṣṭhika*) and *upakṛāntaka* (who intends to remain as a student for some time and then marry in order to confer the benefit of male progeny on his ancestors), that

1471. वानप्रस्थतिष्ठन्न्याचारिणो विप्रभाविनः । क्रमेणाचार्यसन्धिपुत्रधर्मवैक-  
तीर्षिनः ॥ वा. II. 137 ; क्रमेण वतिलोमक्रमेण ... ब्रह्मचारी वैदिकः उपकुर्वाणश्च तु धर्म-  
माचार्य एव सूत्रिनि । ... सन्धिपुत्रः पुनरप्यल्पशास्त्रध्वजपारणतद्वर्षास्तुष्टानक्षमः । कुर्व-  
न्त्याचार्यद्विरपि भगवन्मर्त्यत्वात् । ... धर्मवैकता प्रतिपक्षो ज्ञात एकवीर्यी एकावली धर्मवैकता  
चामा एकवीर्यी च धर्मवैकतावीर्यी । मिता ; वतिलोमक्रमेण उपसम्भवे धर्मे ज्ञेयम् ।  
ब्रह्मचारी च वैदिकोभिमतः पित्रादिपरित्यागेन पात्रस्त्रीभ्याचार्यकुलनिवासपरिचर्यानि-  
ष्टाया तेन कृतत्वात् । द्वापभाष XI. 6.36; शिष्यश्च सम्पन्नश्चपुत्रपुत्रश्च । अत आचार्यधर्म-  
मावेकतीर्षिनापि पुत्राणां धर्मवैकताविनापि । ... अनेकाभिभावेण पात्रकत्वदोषि  
आचार्यसन्धिपुत्रधर्मवैकतीर्षिन इत्युक्तञ्च सम्बन्धं योऽपि सन्धिपुत्र इति मध्ये परित्या-  
गमास । सुप्रतिर्षिः सन्धिरस्य explains धर्मवैकता as सनत्ताचार्यक and वैदिकतिका  
explains एकवीर्यी as समासपुत्रः. The word उपकुर्वाण occurs in विज्ञानसम्मतदेव  
II. 12 and in हारीश q. by अपरार्ज p. 71. वैदिक is derived from निहा 'end',  
विष्णुध. सू. 18. 46 and वैसा. II. 12 employ the word वैदिक. लघुविष्णु I. 24  
defines निहा तत्रैव वैः सन्धिः वैदिकः स उदाहरणः and जेध. on मनु. III. 1 explains  
निहा समासि कच्छति वैदिकः .

1472. एवं ब्रह्मचर्यं वतिलोमक्रमपरतमाभिव्यक्तं वैदिकब्रह्मचर्यादिधनमाचार्या-  
द्वयो यज्ञलोभ्युक्तं विज्ञानिचराचार्यैः । अस्माकं तु वानप्रस्थधनमाचार्यो सूत्रीपात्रिणो वैति  
विष्णुकाव्यद्वयोनात् ब्रह्मचर्योऽप्युक्तमकमपर इति प्रतिभाति । सन्धिरस्य folio 101 b. This  
view of the *Madanaratna* is referred to by the *ev. samuṣa* p. 145.

Yājñavalkya's words apply only to the former, that if the latter (*upakurvāṇa*) leaves any wealth of his own it is taken by his mother, father and the other heirs. The Mit. further says that a worthy pupil is one who is capable of studying the philosophical parts of the Veda, of understanding them and of acting up to them, that a badly behaved pupil will not succeed, so also a badly conducted teacher shall not succeed. The Mit. explains that Yaj. III. 47 allowed a forest hermit to accumulate materials that will be enough to meet his needs for a day, a month or six months or a year and so he may on his death leave some wealth. Similarly, though an ascetic was required by Gautama (III. 10) to make no accumulation of wealth, yet even an ascetic requires clothes to cover his body, he has his sandals and books on Yoga and the like; and so also the perpetual student requires these.

The heirs enumerated above succeed to persons in those religious orders in priority of their kindred. It has been held that members of the three twice-born classes alone can be ascetics with the result that their pupils inherit and not the kindred and that in the case<sup>1473</sup> of śūdra ascetics their kindred succeed unless some usage to the effect that a pupil inherits is proved. For the foundation and administration of *mathas* and properties attached to them, the selection of the heads of *mathas* and their powers and duties and about ascetics and their pupils, vide H. of Dh. vol. II. pp. 906-914 and pp. 944-952.

*Reunion.*—A reunion properly so called can take place only between those who were parties to the original partition. Reunion, therefore, postulates three stages, viz. (1) joint family, (2) partition between members of a joint family, (3) an intention and an agreement, express or implied, to reunite in estate among members who were parties to the partition. If persons who had separated in interest merely stay together, that is not

1473. Vide *Dharmapuram v. Virapantiyam* 23 Mad. 302 (holds that the ordinary law of succession applies to a śūdra ascetic); *Ramdas v. Baldevadasji* 39 Bom. 168; *Somasundaram v. Vaithilinga* 40 Mad. 346, at p. 369; *Haris Chandra v. Atir* 40 Cal. 545; but see *Sambasivam v. Secretary of State* 44 Mad. 704 (holding that the disciple of a śūdra ascetic who dies without leaving any blood relations is an heir under the Hindu Law, but that strict proof would be required of the claimant's spiritual relationship).



reunion in law, as said by the Sm. C. II. p. 302 and Vivāda-candra<sup>1474</sup> p. 82. The Vivādacandra quoting Vispupurāṇa says that reunion may be implied from a course of conduct, even though an express agreement cannot be proved. There is a divergence of views as to who can reunite. The Mīt., the Dāyabhāga<sup>1475</sup>, the Sm. C. hold, literally construing a verse of Br. (S. B. E. 33 p. 381 verse 72), that a member of a joint family when once divided can reunite only with his father, brother or paternal uncle, but not with any other relation (such as a paternal uncle's son or paternal grand-father), while the V. C. (p. 157), the V. Mayūka (p. 146), the V. P. (p. 533) hold that the members expressly mentioned by Br. are only illustrative and that a person may reunite with *any* member who was a party to the original partition. A reunited person is called *samsṛjṣṭa* or *samsṛjṣṭin*<sup>1476</sup> (who has reunited wealth). The subject of reunion has a comparatively ancient history. Gaut. 28. 26 states the general rule that on the death of a reunited co-parcener the surviving reunited member succeeds to the share of the deceased. Kaut. (III. 5 p. 160) states<sup>1477</sup> that those, who live together though they may have no ancestral estate or do so after dividing their ancestral estate, may divide their reunited estate again in equal shares. Manu IX. 210 (= Visṇu Dh. S. 18, 41) is similar to it.

1474. सवर्षाभे पुत्रप्राप्त्यामाहृत्य संसर्गो भाव्य इति तस्मिन्निध-  
युताकण्डेद्वकोपनोदेन विभक्तानां पत्न्यादीनां पूर्ववदेकराशीकरणपर्यन्तः संसर्गो न पुनः सवर्षा-  
समाधमिति मन्तव्यम् । स्मृतिश्च II. p. 302: संसर्गो नैकपाकवासमात्रं संसृज्यवसावे शाश्वतात्  
किं तु निधयैकीकृतधनत्वम् । ... दायभूतमातिभवद्भवं तस्य वत्स्य यथा त्वं तथा ममेति  
स्वीकारः स च कश्चिद्वाचनिकः कश्चिद्व्यवहारान्वयेः । विवादचन्द्र p. 82: यत्र संसर्गं  
समाणातरं नास्ति तत्र साधारणकृत्ये तत्तद्दर्शयितुमौचित्यमपि प्रमाणम् । न च तादृशवैचर्या-  
नन्वे तद्वशात्, अतुल्यापि कृपाः पञ्चदशसिद्धेः । तदुक्तं विष्णुपुराणे । अतुल्यापि त्वयः  
किञ्चित् कुरु भवति कर्मणा । इति । विवादचन्द्र p. 80. संसर्गं तु संयुक्तगौरवतन्मिर्मुलम् ।  
वि. चि. p. 157: विद्यमानं सोपि वा धनमावधौः पुनर्विनागावपि साधारणमिवाकारिकः  
वृद्धिरिच्छा वा संसर्गः । य. मयूख p. 146.

1475. संसृष्टत्वं च न तेन केनापि किं तु पित्रा प्राप्ता पितृव्येण वा । यथाह बृहस्पतिः ।  
विभक्तो यः पुनः पित्रा प्राप्ता वैकृत संसृष्टः । पितृपेयाधर्मं धीयां स तत्संसृष्ट उच्यते ।  
इति । मिता. on वा. II. 136: संसृष्टिता च पित्रादिनैव कर्तव्या नान्येन विभक्तो यः पुनः  
पित्रा हृत्पादि पान्तिभित्तवृहस्पतिवचनादिति ब्रह्मः । असमाभिल्युपलक्ष्यं पित्रादिभक्षण-  
मित्रादि शब्देन प्रयोजितम् । य. म. p. 333.

1476. निधकं धने पुनर्मिर्भीकृतं संसृष्टं तद्वत्पत्नीति संसृष्टी । मिता on वा. II. 136.

1477. संसृष्टिनि येन संसृष्टी रिक्तभाक् । यो. 28. 26: अपिवृद्ध्या विभक्तपितृवृद्ध्या  
वा सह जीवतः पुनर्विभजेत । अर्थशास्त्र III. 5..

The verses of Yāj. (JL 138-139)<sup>1478</sup> on succession to a deceased reunited person are understood by the Mit. to be an exception to the rules contained in Yāj. JL 135-136 laying down that the wife and others inherit the property of a person dying sonless. Therefore it follows that where a person reunites with his brother and then dies leaving a son not reunited with him, it is the son who will inherit and not the brother, though reunited. But if A separates from two sons B and C of whom B reunites with him and C does not and then A dies, then the reunited son B succeeds to A's interest and C takes nothing. This is expressly stated by the Vivādacandra p. 85 that relies on the Śmṛtisāra<sup>1479</sup>. The two verses of Yāj. (JL 138-139) are variously read and interpreted by the Mit. and other commentators and it is not possible nor quite necessary to set out all these readings and explanations. Acc. to the Mit. the two verses mean: 'in the case of a deceased reunited person, the (surviving) reunited member should give (to the posthumous son of the former) the share of the deceased but may take it himself if there is no son (but only a wife); but from among the reunited brothers, the full brother, if reunited, should similarly give to the posthumous son of the deceased the latter's share and (if there be no son) he should take it himself to the exclusion of reunited half brothers; a reunited half brother takes the wealth of the deceased reunited member (dying sonless) and not another half brother who is not reunited; a full brother, though not reunited, may take the wealth along with a half brother who is reunited but the latter will not alone be entitled'. In this interpretation the word 'asamṛṣṭāḥ' in the latter half of JL 139 has to be taken in two connections, once with 'anyodaryah' in the first half and then again with 'samṛṣṭāḥ' (in the 2nd half). This last word is to be understood in two senses, viz.

1478. संसृष्टिनस्तु संसृष्टी सौदरस्य तु सौदरा । दद्याद्वधरैर्ष्यांशं जातस्य च सुतस्य च ॥ अन्योदरैस्तु संसृष्टी नाम्नोदर्यो धनं हरेत् ॥ असंसृष्टश्चपि चाद्वयात्संसृष्टो नाम्नमातृकः ॥ या. JL 138-139. The first is विष्णुधर्मसूत्र 17. 17 also. अपराकं (p. 747) reads 'नाम्नोदर्यधनं हरेत्' and आद्वयात्सोदर्यो नाम्नमातृकः. विवक्ष्य, जिवेन्निष्ठ and विवाध-चन्द्र p. 84 read 'चाद्वयात्सोदरी नाम्नमातृकः'.

1479. Vide *Patirappa v. Yellappa* 22 Bom. 101, 104 for the proposition that a reunited son has a preferential right of inheritance to a grandson who remains separate. Vide विवाधचन्द्र p. 83 'यस्तु विवाध इत्येव केनचित्संसृष्ट-समर्थांशं संसृष्ट एव युष्ठीयावासंसृष्टी संसृष्टिनस्तु संसृष्ट इति वचनात् (... अत एव स्मृतिसारे यदा पित्रे केनचित्संसृष्टेन संसृष्टसादा उद्भूतं संसृष्टिपुत्रं युष्ठीयावासंसृष्टी विभक्तपुत्रः संसृष्टिनस्तु संसृष्टीपविशेषेणाभिधानादियुक्तम्'.



(1) full brother (with the preceding word *asamaṣṭi*) and (2) 'reunited' (with the word 'anyamātrjah'). Further, acc. to the Mit. we have to understand 'eva' after 'anyamātrjah'. Aparārka (p. 748) reads differently and he, Vīśvarūpa and Śrīkaramīra (Dayabhāga XI. 5-16) explain that a full brother though not reunited takes the whole estate and not the half brother though reunited with the deceased. The V. Mayūkha differs from the Mit. when it says that the word *aputrasya* (of one dying sonless) is not to be understood with Yāj. (II. 138). It derives two propositions from the first half of Yāj. II. 138, viz: (1) the wealth of one dying reunited is taken by the surviving reunited member or members; (2) in a competition between reunited full brother and reunited half-brother, the former takes the whole. The latter half of II. 138 is an independent sentence (and not joined with the preceding half as the Mit. understands) and applies where a reunited member dies leaving a wife who is pregnant but that fact being unknown the other reunited members divide the estate. In such a case if a son is born the surviving members should hand over to the son the share of the deceased reunited member. But if no such son is born then the survivors may take the estate. In II. 139 the Mayūkha holds that the words 'anyodarya' and 'anyamātrja' are not restricted to brothers only, but apply to a paternal uncle or his sons or other persons who were reunited, because their mother is also different from the mother of the deceased. The Dayabhāga discusses Yāj. II. 138-139 under the topic of succession to the separate property of a sonless man and its treatment of succession to reunited property is very meagre (vide XII).<sup>1480</sup> The V. P. p. 533 notices this and levels against Jīmūtavāhana the criticism that he got confused. Aparārka (pp. 748-749) seems to be of the same opinion as the Dayabhāga. The V. P. follows the Mit. and criticizes the explanation given by Śrīkara, Sm. C. and others (pp. 535-538). It says that the texts of Śaṅkha, Nārada and others conflict with the text of Yāj. II. 135 and that the order of heirs as to a reunited co-parcener is based on express texts and not on Yāj. II. 135<sup>1481</sup> or logical reasoning. According to the V. P. the order of succession to a deceased reunited

1480. एतेन पत्न्याद्युत्तरधनग्रहणाधिकारिण्ये सावधिकारापसरे वचनमिदं यत्तते इति सावधकां जीमूतवाहनो ज्ञात एतेनवसेवम् । वय. म. p. 533.

1481. तत्रैव पानीदुहिवादिजनविधेयाद्विधेयापैतत् संसृजनानिवधमिति कल्पते । विभक्तिकर्तृवादिजनविधेयाद्विधेयापैतत् सावधिकारिण्ये वचनम् । अपिन्तु कले करण-चिन्तापरवर्तमानाद्यावन्तिक एवैव क्रमः । वय. म. p. 539.

person seems to be: (1-3) son, grandson, great-grandson; (4) reunited full brother; (5) reunited half brother and separated full brother; (6) reunited mother; (7) reunited father; (8) any other reunited member; (9) half brother not reunited; (10) mother not reunited; (11) father not reunited; (12) widow; (13) daughter; (14) daughter's son; (15) sister. The V. Mayūkhā gives the order as follows: (1) son if reunited; (2) son not reunited, though there may be reunited members (other than a son); (3) the parents if reunited in preference to other reunited persons (other than a son); (4) full brother if reunited; (5) full brother not reunited and half brother reunited; (6) half brothers and uncles, if reunited; (7) other male members reunited (in preference to wife though she be reunited); (8) wife if she be reunited; (9) full sister (or daughter according to another reading);<sup>1482</sup> (10) any other sapinda who is nearest. It is to be noted that Manu IX. 212 prescribes a peculiar rule of succession for reunited co-parceners viz. that full brothers (not reunited) and full sisters of the deceased reunited co-parcener equally inherit along with half brothers that are reunited the wealth of the deceased. This verse of Manu has been variously explained by Kullūka, Aparārka p. 749, Sm. C. (II pp. 304-305), Nīlakaṇṭha, Vivādacandra (p. 83) and others.

It may be stated here that cases of reunion come very rarely before the courts.

1482. वा तस्य भ्रातृणी सा तु ततोऽं लभ्युर्माहति । अमपादस्य धर्मोऽमभादापितुकरव  
अ ३ बुद्धः q. by न्य. मयूख p. 152, न्य. न. p. 539. The न्य. न. अयः तेषां वा  
तस्य बुद्धितेति वेदुः । बुद्धितुभाजिनोरभावेऽमपराः सपिण्डाः. Vide दत्त. न. III, p. 541  
for similar words.



## CHAPTER XXX

### STRIDHANA

*Stridhana* (woman's property). This subject abounds with differing views on several topics that fall under it, as will be seen below.

The germ of the topic of *stridhana* can be traced to the Vedic Literature. As Sir Gooroodas Bannerjee remarks (in 'Marriage and Stridhana' p. 370), 'nowhere were proprietary rights of women recognized so early as in India; and in very few ancient systems of law have these rights been so largely conceded as in our own'. The wedding hymn in the Rgveda (X. 85) contains two verses<sup>1483</sup> (13 and 38) which indicate that gifts were sent to the bridegroom's house with the bride. They are: 'the bridal gifts of Sūryā that Savitṛ sent off have gone forth; in the Aghās (Maghā constellation) are struck the kine and in the Arjuns (Phalgunī constellation) is carried (the bridal gift); for thee in the beginning they carried about Sūryā together with the bridal gifts &c.'. Sayana explains 'vāhāt' as 'cows and other objects given for pleasing the girl to be married', while Lanman (Harvard O. series vol. VIII p. 753) renders it as 'bridal car'. Sayana's interpretation suits the context much better. In the Tai. S. VI. 2. 1. 1 we read,<sup>1484</sup> 'the wife (of the sacrificer) holds on (to the cart), for the wife is the mistress of the household gear'. Manu IX. 11 uses the word 'pāripahya' (household gear) and states that the wife should be entrusted among other matters with the supervision over it. Jaimini<sup>1485</sup>, according to Śabara, refers to

1483. सूर्याया वहुतुः नानासविता दमवाहुजत् । अवाहु इत्यन्ते वायोऽर्जुनयोः पर्वणते ॥  
तुल्यमन्ते पर्वणद्वयं धर्तुं पशुना सह । तुलः पतिभ्यो जायां वा अष्टे वजरा सह ॥ अ. X. 85,  
13 and 38. These are almost the same as अथर्ववेद 14. 1. 13 and 14. 2. 1.

1484. दत्तपत्न्यारभते पत्नी हि पारिषद्यपरेष्टे । तै. सं. VI. 2. 1. 1 (in connection with आतिथ्येष्टे).

1485. स्ववत्तामापि दूरीयति । जै. VI. 1. 16; दत्तौ वै पारिषद्यपरेष्टे पार्ष्णेन दत्तमनु-  
मते क्रियते । झरर. The printed text differs from the Tai. S. text; पारिषद्य  
would mean 'nuptial gifts'. The वि. र. p. 517 explains पारिषद्य (in  
Vaa. 17. 46) as पारिषदाख्यं परिच्छद् आदर्शकङ्कुणादिः (paraphernalia, mirrors and  
bracelets). वि. वि. p. 142 reads कङ्कुलिकादि (combs &c.). वि. त्र. (folie 140)  
says: पारिषदाख्यपत्न्यः । आदर्शकङ्कुलाभूतकारश्चकाविरिति कल्पतः । पश्चिममिति  
पाठाद्यौक्तमित्यन्ते.

this passage of the Tai. S. for establishing that women do own certain property. Medhatithi<sup>1466</sup> on Manu VIII. 416 ( cited above on p. 452) quotes this passage of the Tai. S. and argues that if Manu VIII. 416 ( saying that whatever a wife earns is her husband's ) were literally understood passages like the one in Tai. S. would have no scope and that therefore Manu simply means that though women may be owners they cannot dispose of the property independently. It appears from these ancient passages that the properties, which in early days were held to be owned by women, were presents made at the time of marriage ( such as ornaments and costly dresses ) and household articles that are generally under the control of women and that the later smṛti rules about the devolution of stridhana in the female line arose from the peculiar nature of the articles over which dominion was conceded to women. This early state of things is indicated by some of the early sūtras. Āp. Dh.<sup>1467</sup> S. ( II. 6. 14. 9 ) states the view of some predecessors ( which Āp. himself does not approve ) that the ornaments belong to the wife and also such wealth as came to her from her agnates ( father, brother &c. ). Baud. Dh. S. II. 2. 49 says that daughters get the ornaments of their mother and whatever else it is customary for them to get. Vas. 17. 46 prescribes that women ( daughters ) should divide the nuptial presents given to their mother. Śaṅkha ( q. by Sam. Pr. p. 851 ) prescribes that in all forms of marriage ornaments and stridhana should be given to the girl. It may be that Manu VIII. 416 only gives expression to an ancient opinion, that the literal meaning of that verse was given up long before and that all that Manu meant was that during coverture a woman was subject to the control of the husband as regards her stridhana.

Three principal topics have to be discussed under stridhana viz. what constitutes stridhana, woman's dominion over her

1466. असति वा स्त्रीणां स्वाम्यं पत्न्यैश्चाजुषमनं क्रियते पत्नी वै पारिजयस्येते इति वादिसुतयो विराटम्बनाः सः । अथोक्तपते । पातक्यमभिधानमेतत् । असती भवन्तुज्ञायां न स्त्रीभिः स्वाम्येन न च कचिद्वनं विनिवोक्तवत् । मेधा. on सप्त VIII. 416.

1467. अलङ्कृतो भार्यायां ज्ञातिधनं चेदे । आप. ध. सू. II. 6. 14. 9 : ननुपलङ्कारं दुहितेऽपि सौपद्र्यापके लभेरक्षयः । नो. ध. सू. II. 2. 49 : मातुः पारिजये स्त्रिये विनयेत्य । वसिष्ठ 17. 46. The Br. I. p. 521 explains आप. as 'ज्ञातिधनं चेति निशेधे यज्ञं दौतकाद्यं दत्तं तदपि भार्याया एव'. The Mita. on पात्र. II. 117 seems to have read this as a supplement to the preceding sūtra about the special share of the eldest son. The द्वादश IV. 2. 15 p. 62 and विवादचन्द्र p. 75 read पारिजये in Vas. and explain as पारिजयनलवधं धनं or विवादकादीनि respectively.



stridhana and inheritance to stridhana. On each one of these topics great diversity of views prevails and the subject has become very complicated, as the Dayabhāga remarks<sup>1489</sup>.

Gautama contains three sūtras about the devolution of stridhana, but he does not define or describe it.<sup>1488</sup> Kaut. (III 2. p. 152) defines<sup>1489</sup>: 'means of subsistence and what could be tied on the body (i. e. ornaments and jewellery) constitute stridhana. The means of subsistence should be fixed at 2000 (paṇas) as the maximum, while there is no limit to (what may be given) as *śradhānt* (ornaments &c.)'. This may be compared with a verse of Kāt. (902) and a similar<sup>1490</sup> verse of Vyāsa viz. 'the father, the mother, the husband, brother and kinsmen should give stridhana to a woman according to their means up to two thousand (paṇas) except immovable property'. The Sm. C. and V. Mayukha explain that this limit of 2000 applies to gifts made every year, but that if a gift is to be made once for all, then more may be given and even immovable property may be given.

The term stridhana literally means 'woman's property'. But in the ancient smṛti works the word was restricted to certain special kinds of property given to a woman on certain occasions or at different stages of her life. Gradually such kinds of property went on increasing in extent and value. We have to follow this evolution of the meaning and content of the word stridhana. One characteristic feature of stridhana from the times of Gautama downwards has been that it devolved on females in the first instance. The oldest extant definition of it

1488. इत्यस्मिन्मनुस्मृत्यनुसारेण स्त्रीधनम् । द्वादशमा IV. 3. 42 p. 99.

1488a. For exhaustive treatment of stridhana the following works may be consulted: Sir Gooroodass Bannerjee's 'Hindu Law of marriage and stridhana' (5th ed. of 1923) pp. 319-319, Dr. Jolly's T. L. L. on 'Adoption, Inheritance and Partition' (1885) pp. 226-270.

1489. वृत्तिराचर्यं वा स्त्रीधनम् । परस्मिन्महा स्थाप्या वृत्तिः । आचर्यानिवन्तः । अर्थ-शास्त्र III. 2.

1490. पितृमातृपितृमातृजातिभिः स्त्रीधने स्त्रियै । पञ्चाशत्तया द्वादशमाह द्वादशम् स्थानादहते । कात्या. q. by स्मृतिक. II 281, वरा. मा. III. p. 548, स्प. मधुसू. p. 134; द्वादशमाहः परो द्वाधः स्त्रियै देयो यमस्य च । पञ्चमर्तो धनं दत्तं सा पञ्चाशत्तममश्नुयात् । पञ्चाशत् q. by स्मृतिक. II. p. 281, अपराके p. 732, द्वादशमा IV. 1. 10, बालम्बहृते, स्प. मधुसू. p. 134. The वरा. मा. III. p. 548 quotes बृहस्पति 'द्वादशम् च पञ्चमर्तो शेरार्कं वा पविशति ।'

in Dharmaśāstra works is that of Manu<sup>1491</sup> IX. 194: 'what (was given) before the nuptial fire, what was given on the bridal procession, what was given in token of love, what was received from her brother, mother or father, that is called the sixfold woman's property'. The Mit. on Yāj. II. 143 explains that the number six is intended to exclude a smaller number of the kinds of stridhana and does not exclude a larger number. In IX. 195 Manu appears to mention one more kind viz. 'anū-dhaya' (gift subsequent). Nār. (dāyabhāga, 8) has the same six kinds as Manu IX. 194, but reads 'bhartrdāya' (the husband's gift) for Manu's 'what is given in token of affection', the latter being thus wider than Nārada's words. Yāj. (II. 143-44) enumerates<sup>1492</sup> the several kinds of stridhana as follows: 'what was given (to a woman) by the father, mother, husband or brother or was received by her before the nuptial fire, or what was presented on her husband's marrying another wife (ādhiśekanika) and the like—these are denominated stridhana; so also what is given by the cognate relations (of the woman), the *śulka* (fee), and gifts subsequent to marriage'. The Mit. and most of its followers read 'ādhiśekanikādyam ca', while Aparārka and the Dāyabhāga read 'ādhiśekanikam caiva', the difference being that if one reads as the Mit. does, several other kinds not expressly enumerated can be easily included under stridhana. But it should be noted that even without reading —'kādyam', Aparārka explains the verse in the same way as the Mit. does. Viṣṇu<sup>1493</sup> Dh. 8. 17, 18 enumerates almost the same kinds of stridhana as Yāj., but omits the word 'ādya'.

Among smṛti writers Kātyāyana gives the most elaborate treatment of stridhana in about twenty-seven verses. He

1491. अथपञ्चदशपातनिकं दत्तं च प्रीतिकर्मणि । अतुमातुपितृवत्तं बहुविधं स्त्रीधनं रचुतम् ॥ मनु IX. 194. कारदार. (394) acc. to द्वायभाग (IV. I. 4 p. 72). वि. र. 522 and वि. नि. p. 135 had practically the same verse (reading प्रीतितः स्त्रियै). The Mitā. says, 'यतुमन्तुमेकै ... स्त्रीधनाय बहुविधेन जन्मदूतसंस्कारपञ्चदशपातनिकसंस्कारपञ्चदशपातनिकं मतुदायस्तैव च । अतुमातुपितृवत्तं बहुविधं स्त्रीधनं रचुतम् ॥ भारद् (द्वायभाग, 8) .

1492. पितृमातृपतिप्रातृदत्तमथमनुपायनम् । आधिषेदुनिकाश्च स्त्रीधनं परि-कीर्तितम् ॥ यन्मुदत्तं तथा शुल्कमन्योपेयकमेव च । या. II. 143-144. On आधिषेदुनिकं चैव, अपराकं p. 751 says: यज्ञम् आद्यर्थः । तेन च स्त्रीधनान्तरपरिग्रहः । तद्यथा—जायतः पत्युः सगाशिकाः, मातापत्यं समे हस्ते । स्वस्मादुशाद्यतुर्मान्, मातुः परिणाशं स्त्रियो विभजे-त्य्, अग्न्यद्विषा खाद्यविनामिकं तदस्त्रीधनमिति मन्वादिभिः परिकीर्तितम् । Against the reading चैव the वाल्मन्सी remarks 'अथ आधिषेदुनिकं चैवेति प्राच्यभूषणोऽथ युक्तः, पञ्चदशस्य वैपद्यमिति । मृततापतेः, वचनान्तरविरोधापत्तेः ।'

1493. पितृमातृपतिप्रातृदत्तमथमनुपायनमाधिषेदुनिकाश्च यन्मुदत्तं शुल्कमन्योपेयकमिति स्त्रीधनम् । विष्णुधर्मसूत्र 17, 18.



defines several kinds of *stridhana* enumerated by Manu, Yāj., Nār., and Viṣṇu (in all six) as follows<sup>1494</sup>: what is given to women at the time of marriage before the nuptial fire is declared by the wise to be *adhyagni*<sup>1495</sup> *stridhana*. That again which a woman obtains when she is being taken (in a procession) from her father's house (to the bridegroom's) is declared to be *adhyāvahanika* *stridhana*. Whatever is given to a woman through affection by the father-in-law or mother-in-law and what is received by her at the time of doing obeisance at the feet (of elders) is said to be *priti-datta* (gift through affection) *stridhana*. That is declared to be *śulka* (bride's fee) which is obtained as the price of household utensils, of beasts of burden, of milch cattle, ornaments and slaves. Whatever is obtained by a woman after marriage from the family of her husband as also from the family of her (father's) kinsmen is said to be *anvādheya* (gift subsequent). According to Bhṛgu whatever is obtained by a woman after marriage through affection from her husband or from her parents is *anvādheya*. It may be noted that Kātyāyana's definitions of *adhyagni* and *adhyāvahanika* are wide

1494. विवाहकाले यस्त्रीभ्यो दीयते साधनेनिधौ । तदध्यग्निकृतं सतिः शीघ्रं परि-  
कीर्तितम् ॥ वयुनर्लेभते नारी शीघ्रमाय पितुर्देहात् । अन्धावहानिकं चैव शीघ्रं तदुदाहृतम् ॥  
प्रेमया दत्ते तु यत्किञ्चित् श्रद्धया वा श्रद्धेया वा । पादकन्दनिकं चैव यत्किञ्चित् तदुच्यते ॥  
प्रेमोपकारपादानां दोष्टाभरणकर्मणाम् । सूर्ये लब्धं तु यत्किञ्चित्पुनर्न तत् परिकीर्तितम् ॥  
विवाहापरतो यत्तु लब्धं भर्तृकुलात् शिवम् । अन्वाधेयं तदुक्तं तु लब्धं वन्धुकुलात् तथा ॥  
उभौ लब्धं तु यत्किञ्चित् संस्कारात् कीर्तितं शिवम् । भर्तुः पित्रोः सकाशात् अन्वाधेयं तु  
ननु भूयः ॥ उक्तं कर्मणा वापि भर्तुः पितृपुत्रेभ्यः वा । ब्राह्मः सकाशात् पित्रोर्वा लब्धं सौदायिकं  
स्मृतम् ॥ कात्या. 895-901. The śrīṣṭa quotes all except two (viz. 898 and 900),  
the dāyamañ (IV) quotes all except 897, वि. र., (pp. 510, 524-525) reads all;  
दीपकालिका, दायभाग IV, 1, 5 p. 75, कुम्भक on मय 9 124, वि. वि. p. 138 read  
शीघ्रमाय हि (or तु) पितृकुलात् in 896; अन्वाधेयं p. 751, रघु. नि. p. 465, विवाहकाल-  
p. 77, वि. वि. p. 138 read दौष्टाभरणकर्मणाम् for यत्किञ्चित् तदुच्यते; दीपकालिका,  
स्ववतारसार p. 237, रघु. य. p. 543 read दोष्टाभरणकर्मणाम्; वि. वि. p. 139 and  
१७, भद्रक. p. 153 read वन्धुभ्यः स्वरकुलात्सया; निता., स. वि. p. 380 read वन्धुभ्यः पितु-  
कुलात्सया. दायभाग reads भर्तुः सकाशात् पित्रोर्वा.

1495. Some of the words deserve explanation. *अध्यग्नि* is formed as an  
अन्वयीभाव from अग्नि + अग्नि acc. to वा. II, 1, 6 'अन्वयं विभक्तिस्मर्यः' and  
means अग्नि-आधिकृत्य अग्निस्मर्यो इत्यर्थः (पालम्भही); आधिकृत्य अग्निदेवत्वं धर्म-  
पात्राय धर्मो रणत एव विवाहापरकारणं तत् किञ्चित् अग्नेति । सुशोभिनी and पालम्भही  
(which relies on वा. V. 1, 34). Some read अन्धावहानिकं, others read अन्धावहानिकम्.  
आवहन or आवाहन means पितृकुलात् भर्तृकुलात्सयिः (मन्दन on मय IX, 194) सम्प्र-  
दोपलब्धमन्धावहानिकं, अन्धाधेयं means अन्ध (विवाहापरतः) आशीयते इति (मन्दन);  
instead of यत्किञ्चित् some read स्वरकुलात्सयि (obtained by her lovers) which  
is explained by the वि. वि. (138) as लब्धं सौदायिकादि । तथा च पादकन्दनिकं  
श्रीलाङ्गिनैव वा किञ्च श्रद्धादिना दत्ते तुनीयं शीघ्रमभिमर्त्यः ।

enough to include gifts made even by strangers on those occasions.

These definitions given by Kātyāyana have been accepted by all digests including even the *Dāyabhāga*.

"That is known as *sandānika* which is obtained by a married woman or by a maiden in her husband's or father's house from her brother or from her parents" (Kāt.). Some of the divergences in readings and in interpretation deserve to be noted. Acc. to the reading adopted by the *Mit. adhyāvanika* includes all gifts made by any one when the newly married girl is taken from her father's house in a procession, while the reading adopted by the *Dāyabhāga*<sup>1496</sup> and some others (*paṅkāl*) restricts the *adhyāvanika* to gifts made by the father's or mother's family only. The V. R. (p. 523) includes under *adhyāvanika* also the gifts made by the father-in-law and others when the girl is taken back to her father's house and the V. C. (p. 138) says that it is what is obtained at the time of '*śrīdhānam*'. The *Dāyabhāga*<sup>1497</sup> (IV, 3, 19-20 p. 93) explains '*dohyābharana-karmīṇām*' differently as 'the gratification paid by house-builders or goldsmiths to induce her to press her husband to engage them' or as Vyāsa says 'what is given to a woman to induce her (cheerfully) to go to her husband's house'. The Sm. C. and V. P. explain *śulka* as the price of the articles which the bridegroom was in the habit of presenting to the bride at the time of marriage or when he started a house.<sup>1498</sup> The V.

1496. वैतुकादिभ्येकशेषेण पित्रमातृकुलार्थं यद्वहते धनं भर्तृसह नोपमाना तदुपधावाह-  
निकम् । द्वावभाग IV, 1, 6 p. 73. 'भर्तृसहायदा पित्रकुलं वागते तदा चक्षुरादिभिर्दत्त-  
मपधावाहनिकमिति मेधातिथिः तद्विद्यायां व्याख्यानम् ।' नि. र. pp. 522-523;  
श्रीनिवसनकाले यद्वहते उपधावे तदुपधावहनिकमिति । नि. चि. p. 138. The printed  
editions do not contain the comment of मेधातिथि on मनु IX, 184 and the  
following verses.

1497. स्थादिकर्मिभिः शिल्पिभिरन्वयकारणाय भर्तादिवरणाथं किंचिदुपधावाहनाय  
तदुपधावे तद्विद्यायां व्याख्यानम् । व्यासोक्तं वा यथा । यदा भर्तुः भर्तृसहो धनं कदा परि-  
कर्मितम् । भर्तृसहममार्थमुपधावादि यद्वहते तच्च वाह्यद्विषयविशिष्टम् । द्वावभाग IV, 3,  
20-21 p. 93.

1498. The change in the meaning of *śulka* is interesting. One mean-  
ing of *śulka* is 'tax or toll on merchandise'. Vide *Vīṇa Dh. S.* III, 29,  
Yāj. II, 173, 264, Vas. 19, 37. Pāṇini V, 1, 47 uses that word in that sense  
(तद्विद्यायां व्याख्यानम्) and the *Kāśikā* explains it as व्यासिर्वाहो  
पदभागाः शुल्काः. Another sense is 'the fee paid to the bride or her parents  
by the bridegroom in consideration of marriage'. The word occurs in



Nir. (p. 468) states that *sulka* has two senses: (1) what is given as the price of the girl to the guardians of the girl which goes to the mother and brother (on her death); (2) what is given (by the bridegroom) as the price of the ornaments for the girl and of the household gear.<sup>149</sup> Another verse of Kāt. (904) has been quoted by many writers, which restricts the literal sense of the word *stridhana*, 'over that wealth that is obtained by a woman by mechanical arts (such as spinning) or from a stranger through affection, the husband has ownership

(Continued from the last page)

Gaut, 28. 23 and in Śaṅkha (*avyaṁ kulkam codhā*) q. by V. R. p. 521. In very ancient days there appears to have been a practice to offer in some cases considerable wealth to the father of the bride to induce him to give her in marriage. Rg. 1. 109. 2 refers to this: 'O Indra and Agni! I have heard that you are more liberal than even an unsuitable (or deficient) son-in-law or even a brother-in-law'. Yaska (VI. 9) in explaining this verse remarks that the southern people speak of the husband of the bride that is purchased as 'vijāmāṭ' (विजामाता इति शब्दश्च दाशिलायाः कीर्त्यादिमाचरन्ते अनुसमाम इव वरोभिन्नेः). But this verse also shows that the bride's brother (*vyāta*) had to give wealth to his sister's husband. Vide H. of Dh. Vol. II. pp. 503-506 for passages about the sale and purchase of girls in marriage from ancient times right down to 1800 A. D. Though sometimes girls were purchased for marriage, popular feeling gradually asserted itself against this. In the Yānaparva (115. 23) Gādhī claims as the custom of his family one thousand horses of the best kind from Rājā when the latter preferred his suit for the hand of Gādhī's daughter (रचितो नः कुले विजित् पूर्वैर्दत्तमवर्तितम् । एकतः स्वामकर्णो वाण्डुराणां वरस्मिन् । सहस्रं वाजिनो ह्युत्कृष्टमिति विद्धि द्विजोत्तमः). Vide Anuśāna 4. 12 (for a similar statement) and 2. 31. Manu III. 51 forbids the taking of even a small gratuity through greed by the father when giving away his daughter in marriage and says that if he does so he would be guilty of the sale of his child and in III. 54 (almost the same as Anuśāna 4. 1-2) Manu says that when agnates do not appropriate to themselves the gratuity paid (by the bridegroom) for the bride but hand it over to the bride then it is not sale, but it is honour shown to the girl and is merely kindness to her. The Mit. defines *sulka* as the gratuity after getting which the girl is given. The V. C. p. 139 defines it as what is obtained from the husband on condition of furnishing household gear &c. 'सुहृदपस्करादिकरणोपाधिना विना सुहृदपितो यत्नयेत्पुत्रकामेयस्य'.

1499. तत्र सुत्कं द्विविधं कन्याधिकृतमूल्यत्वेन कन्यादम्नो दत्तमेकम् । तन्मातुषामिवाहृतानि वा । कन्यापुत्रपुत्रोपकरणसूत्यत्वेन दत्तमपरं सुत्कम् । तदाहृतिरेवद्विषयः । अथ, नि. p. 463.

the rest is declared to be stridhana'.<sup>1500</sup> The *prima facie* view (*pūrvapakṣa*) in Jai. VI. 1. 12 urges that what a woman gets by serving cooked food or by cutting clothes does not belong to her. The gifts from strangers here referred to are other than those made by a stranger before the nuptial fire or at the time of the bridal procession. This definition makes it clear that what is obtained even from a stranger by a maiden or by a woman who is a widow at the time of the gift is pure stridhana. Devala says, 'maintenances (what was given for maintenance), ornaments, *śulka* (bride's gratuity), the profits of money-lending are a woman's stridhana. She alone is entitled to enjoy it and the husband is not entitled to enjoy it except in the case of distress'.<sup>1501</sup> Manu IX. 200 states, 'the heirs of the husband should not divide (among themselves) the ornaments worn by women during the lifetime of their husband; If they divide them they incur sin'. In the printed editions of Manu there is no comment of Medhātithi on this verse, but the V. R. (p. 509), V. C. p. 139, *Dayatattva* p. 184 all say that acc. to Medhātithi even ornaments, though not donated expressly, become stridhana, if worn with the husband's consent.<sup>1502</sup> According to the *Vaijayanī* such ornaments should be assigned to the share of the woman's husband so that she alone might put them on and that it is not meant that such ornaments are not to be taken into account at all at the time of partition.

1500. मासं शिल्पैस्तु यद्धिनं स्त्रिया चैव यद्व्ययतः । भर्तुः स्वाम्यं तदा तत्र शेषं तु स्त्रीधनं स्मृतम् ॥ कात्या. q. by द्वायभाष IV. 1. 19-20 p. 76, स्मृत्युच. II, p. 291, परा. मा. III. 550, म्य. मयूख p. 154. द्वायभाष explains: अग्नय इति पितृनामृणुकुल-स्वयतिरिक्तात् यद्व्ययं शिल्पेन वा यद्व्ययं तत्र भर्तुः स्वाम्यं स्वातन्त्र्यम्, अनापद्येति यत्तां यद्व्ययमर्हति तेन स्त्रिया अपि धनं न स्त्रीधनमस्मान्स्यात्. 'यद्व्ययं भक्त्योत्पत्तेन वा कर्तनेन वा धनमुपाजितं तेन यवत इति । उच्यते तद्व्ययं न स्वम्.' भाष्य on जै. VI. 1. 12.

1501. वृत्तिराभाजनं धुत्वं लानंश्च स्त्रीधनं भवेत् । भोजनी च स्वयमेवेष्टं यत्किञ्चिद्व्यय-पादि ॥ देवल q. by अपराजित p. 753, स्मृत्युच. II, p. 283, द्वायभाष IV. 1. 13 p. 75, वि. र. p. 512, म्य. मयूख p. 36, वि. चि. p. 141. Some read वृद्धिः (च. म. p. 543 does so). लानं is variously explained. लान्यते इति लानः । एतदुक्तं भवति । धर्मपादि-धीर्यधी व्रतदौ च स्त्रिया लान्यते तदपि स्त्रीधनमिति । स्मृत्युच. II, p. 383; म्य. च. p. 543 and मयूखरत्न follow this, 'लानो वङ्गुणो लान्य' वि. र. p. 512, वि. चि. p. 141; 'वृत्तिर्भावनायै विद्याद्विधुं लानो वृद्धिः' म्य. मयूख p. 136.

1502. परस्य जीवति यः स्त्रीभिरलङ्कारो धृत्वा भवेत् । न तं भवेत्य द्वापादा भजमानो परमि ते ॥ मनु IX. 200, which is almost same as विश्ववर्मसूत्र 17. 22. परद्व्ययलङ्कारो (ज्ञानेनो) व्यद्व्ययलङ्कारो यो मण्डनार्थं धृत्वा सोऽपि द्वापादेन वर्तमान इति मेधातिथिरिति ब्रह्मसूत्रः । वि. र. p. 509; परद्व्ययलङ्कारो यो मण्डनार्थं धृत्वा सोऽपि द्वापादेन वर्तमान इति मेधातिथिः । वि. चि. p. 139 and द्वायभाष p. 184.



*Saudāyika* is not a special kind of *stridhana*. It is rather a comprehensive term for several kinds of *stridhana* as the definition given by Kāt. shows and as the V. C. (p. 139) expressly states<sup>1503</sup>. It is almost synonymous with *stridhana* in the technical sense. Acc. to most writers, it is wealth received by a woman, whether as a maiden or as a married woman, in her father's or husband's house from her parents or relatives of the father and mother. The Sm. C. II. p. 282 and V. R. p. 511 hold that *saudāyika* is all wealth obtained by a woman whether as a maiden or as a married woman from her mother, father or paternal relatives only, while the *Dāyabhāga* IV. 1. 23 pp. 76-77 and V. C. hold that *saudāyika* includes also all property donated by the husband except immovable property, which latter she cannot alienate even after her husband's death. There is a verse of Vyāsa<sup>1504</sup> that defines *saudāyika* similarly, 'whatever is obtained by a woman as a maiden at the time of marriage and after marriage from the house of her father or husband is termed *saudāyika*.' The word '*saudāyika*' is derived from '*sudāya*' and means, according to the *Dāyabhāga* IV. 1. 22 p. 76, 'received from affectionate kindred'. The *Amarakośa* says that '*sudāya*' means 'gifts of *yautaka* and the like' and that *saudāyika* is merely a derivative without change of meaning.<sup>1505</sup>

Another word requiring explanation is '*yautaka*'. It occurs in *Manu* IX. 131, 'whatever is the *yautaka* of the mother goes to the maiden daughter' (and not to the married daughter or son). So *yautaka* seems to be a synonym for *stridhana* in

1503. एवं स्त्रीयजनानि भवन्ति । एतदेव स्त्रीणां सौदायिकं तथा च काल्याणम् । ऊहया ... भवेत् । पशुरिवधामि स्त्री इति सम्बन्धः । ... सप्तविंशत्यक्षरम् । तेन कल्पया वा ऊहया वा विदुषो वा तत्कुलसौ वा पतिकुलसौ वा यद्वयं तत्तर्हि तस्याः सौदायिकमिष्यते । अथ-मानुष्यादिकमन्येतावच्छः । वि. वि. p. 139; द्वापभाषा IV. 1. 21 reads भर्तुः सकाशात् पित्रोः, 'भर्तुः सकाशादिति कल्पतर्वादौ पाठः' स्व. म. p. 543.

1504. यत्कन्यया निवदे च विवाहान्तराथ भर्तुः । पितृभर्तृद्वयमात्रं धनं सौदायिकं स्मृतम् ॥ व्यास. १. by स्मृतिच. II. p. 282, स. वि. p. 378.

1505. सुदायसम्बन्धिभ्यो लघ्वे सौदायिकम् । द्वापभाषा IV. 1. 22: यौतकादि तु यद्वेपं सुदायो हरणे च तत् । अमरकोशः, ननु 'सौदायिकं तु यद्वेपं सुदायो भरणं च तत्' इति निष्पद्युपादान् कथं सौदायिकइत्यदोष मनुक्तः । स्वार्थे शब्दितान्तपेयत्वस्यम् । स्मृतिच. II. p. 282. The quotation from *Amar* seems to be corrupt as printed by Mr. Gharapure; the Mysore edition correctly reads 'यौतकादि तु यद्वेपं सुदाय इति निष्पद्युपादान्' (vol. III. 2. p. 655). 'सुदाय एव सौदायिकं स्वाधिकइव । स्वदायसौ लघ्वमिति वा । स्वदायं सुदाय ! सम्बन्धिभ्यो लघ्वमिति तु भाजः' बालभट्टी ०७ वा. II. 143.

the technical sense. The Sm.<sup>186</sup> C. II p. 285, Madanaratna (folio 105 b) and V. Mayūkhia remark 'yautaka is that wealth that is received as a gift from anybody by a woman while she is seated together with her husband at the time of marriage and the like'. It is derived from *yuta* (joined). It should, however, be noted that Yaj. II. 149 employs the word *yautaka* as an adjective in the sense of 'separated' and that Medhātithi on Manu IX. 131 explains 'yautaka' as the separate property of a woman, her *stridhana*. The Sm. C. II. p. 285 remarks that Devasvāmi derived 'yautaka' from 'yu' (to separate) and held it to mean 'wealth obtained from the family of the woman's father which is separate in its characteristics'. The V. C. p. 142 and Vivādacandra p. 74 read 'yautuka' and the former explains it as gifts from the father and the like at the time of marriage. The Dāyatattva (p. 186) states that both forms 'yautaka' and 'yautuka' are in vogue and relies on Vācaspati and Rāyamukuta in support.

Kaṭ. (III. 2. p. 153) names *śulka*, *anvādheya*, *ādhivedanika* and *bandhudatta* as kinds of *stridhana*.

The above are the principal *smṛti* texts on the question of what constitutes *stridhana*. It will be seen that the *smṛtis* only enumerate and describe certain kinds of property as *stridhana*, which word is not used by them in the etymological sense of 'all kinds of property possessed by a woman'. They do not attempt a comprehensive definition of *stridhana*. From the texts of the *smṛtis* it follows that *stridhana* was a technical term, which at first included only six kinds of property, then nine and ultimately by the time of Kātyāyana it included all property (whether movable or immovable) obtained by a woman, either as a maiden or at marriage or after marriage.

1506. चौतर्क विवाहादिकाले एकदासगोपविद्यायां लभ्यम् । अत्र एवौक्तं निष्पन्दु-  
कारेणुमपोर्वातकमिति । मदनरत्न folio 105 b, म. मयूख p. 158 quotes the मदनरत्न,  
वि. र. p. 517 explains 'चौतर्कमत्र परिणयनकाले विवादिभिः किरि दत्तम्' । परा. मा.  
III. p. 552 explains as पितृकुललभ्यम्. चौतर्कं समानासगोपदेशनप्रणामभवाविधुतरयो-  
र्विवाहादौ येन केनचित्समर्थितं धनं तद्वधूरपौर्द्धवं युतयोर्वातकं मतमिति निष्पन्दुकारोक्तम् ।  
... वैषयामी तु पितृपुत्रादयश्च भर्तृपुत्रादयश्चैव वा पुत्रघनतया चौतर्कं मतुचनं (ब्रातृधनं) ।  
मोक्षार्ह । उचितम् । पञ्चदशस्यापि कल्पनाभावनात् । स्मृतिच. II. p. 263. Vide sv. y.  
p. 348 for most of these being brought together. स्प. नि. p. 463 explains  
चौतर्कं as मातृकुललभ्यम्. 'चौतर्कस्यः पुत्रभावेन च स्त्रीधने । तत्र हि तरया एव केवलायाः  
स्वाम्यम् । अन्ये तु सौदायकमेव तत्सम्पत्तौ धनं तत्र हि तरयाः स्वात्म्यम् । मेरा. on  
मनु IX. 131 : चाक्षरपतिनिभरायमुक्तद्वुताद् चौतर्कं चौतर्कमपि साधु । परिणयनकालः  
परिणयनपूर्वापरीकृतकालः स च द्विविधाद्वाराभ्यामप्यभिजाद्वन्तो विवाहतन्त्रे विद्युतः । द्वाप-  
त्य p. 186.



from her parents or the family or relatives of the parents or from the husband and his family (except immovable property given by the husband) and that what was obtained by a woman *after her marriage* by her own labour or from strangers did not become stridhana. Most smṛtis employ the word 'datta' (donated), but Kāś. and Vyāsa sometimes use the word 'obtained' (*prāpte* or *labdha*), which is ordinarily wider than 'datta'. But it is clear that the commentators do not expressly say that 'obtained' includes 'inherited', though from their general remarks to be quoted below it is arguable that they probably included inherited property under property obtained.

This is stridhana in a technical sense.

It is now necessary to find how stridhana was defined by the several commentaries and digests that are held authoritative in the several schools. This is a most important matter for practical purposes, since the courts have to follow the opinions of commentators<sup>1507</sup> that are authoritative in each school and are not at liberty to put their own construction upon ancient smṛti texts, if such construction would run counter to the express opinions of the authoritative commentators. First then comes the *Mitākṣarā*. Its gloss on Yāj. II. 143 may be translated as follows<sup>1508</sup>: 'whatever is given by the father, mother, husband and brother; what was presented by the maternal uncle and the like at the time of marriage before the nuptial fire; and *śāhīśālanika*, that is, gift made (by the husband) at the time of marrying a second wife as will be described subsequently in the words 'he should give to the wife that is superseded' (Yāj. II. 143); by the word 'ādya' (meaning 'and the like') is indicated property that is obtained by succession, purchase, partition, seizure or finding—all this is declared by Manu and others to be stridhana. The word stridhana is employed here in its etymological sense and not in a technical sense, since, when the etymological sense is possible, it is improper to resort to the technical sense.' The *Mitākṣarā* expanded the

1507. Vide *Collector of Madura v. Mootoo Ramlinga* 12 Moo. 2, A. 397, 436, quoted in *Atmarām v. Bajirao* 62 I. A. 139 at p. 143.

1508. विद्यासागरादयः प्राजा च दत्तं यच्च विवाहकालेऽप्राप्यदत्तं मातुलादिभिर्दत्तं, अपिच दत्तं अथिरेदन्निमित्तं अतिविशाले दद्यादिति वक्ष्यमाणम् । अथ यस्मिन् विवाहादपरे विमानपरिवारादिमन्त्रकाले एतत्तद्विधेयं सत्त्वादिभिर्दत्तम् । कथितं यच्च दत्तं पतिविक्रये न पतिविक्रयः । अथ यस्मिन् परिवाराणां अनुकूलम् । विद्या. on यज. II. 143. As against the last sentence of the *Mit.* may be compared the maxim (*nyāya*) 'कथि-रपि न दत्तं' (relied upon in परा. मा. I. 1. p. 300).

definition of strīdhana so as to include under it the five kinds of property of which a man becomes owner in various ways according to Gautama X. 39. The result is that, according to the Mīl., property of any description belonging to a woman becomes strīdhana even if it be inherited by her from a male as a widow or as a mother or even if it be obtained at a partition by a wife or mother (acc. to Yāj. II. 115 or 123 respectively). The same interpretation of the word 'ādyā' has been accepted by several works, such as the Madanapārījāte (p. 671), the S. V. (p. 379), V. P. (p. 542), the Bālabhāṭṭi. Aparārka without reading 'ādyā' gave the same explanation of 'ca' as stated above (on p. 773). On the other hand, the Dāyabhāga gave a restricted meaning to the word. Jimūtavāhana reads Yāj. II. 143 as 'ādhiśedanikam caiva', quotes the verse of Devala (in note 1501), remarks that strīdhana is not restricted to the six kinds of Manu (IX. 194) but includes other kinds mentioned by other smṛtis and finally<sup>1509</sup> observes: 'that alone is strīdhana which a woman has authority to donate, sell or enjoy independently of her husband's control'. The Dāyabhāga does not expressly state the kinds of property that a woman can dispose of independently of her husband, but immediately after defining strīdhana it quotes the texts of Kāt. (about earnings from mechanical arts and gifts from strangers) and Nār. (IV. 28), 'what has been given to a wife by her loving husband, she may spend or give away as she likes even after his death excepting immovables'. From this it follows that, according to the Dāyabhāga, all gifts from relations except a gift of immovable property made by the husband and gifts from even strangers made before the nuptial fire or on the bridal procession constitute strīdhana, but property inherited by a woman or obtained on partition, gifts from strangers (other than the two kinds noted above) and property acquired by her by mechanical arts or by her labour are not strīdhana. The Dāyatattva closely follows the Dāyabhāga.

The Sm. C. does not give a definition of strīdhana, but it does not adopt the interpretation of the word 'ādyā' given by

1509. तदेवमप्यदिशतसंख्यक्षीपनक्षीर्तमात्रं यदसंख्या विवक्षिता किं तु क्षीपन-  
क्षीर्तनमात्रपरानि वञ्चनानि। तदेव न च क्षीपने यद् भर्तुः स्वातन्त्र्येण दानाधिकभोगात्कर्तुम-  
धिकरोति। ... स्वाधरेपि भर्तुर्दत्तमात्रे क्षिप्य दानाद्यनधिकारः। तदाह वारकः। यथा पीतं  
यद्वर्णं क्षिप्य वस्त्रममुदीर्येत् तद्। सा यथाकाममश्नीयाद् दद्याद्। स्वाधरादुते। भर्तुर्दत्तविशे-  
षमाह भर्तुर्दत्तस्वाधरादुते अप्यह स्वाधरे त्वमेव भवति। दायभक्त IV. 1. 18 and 23.  
मीलकण says 'क्षीर्ता स्वातन्त्र्येण विनिर्वाह्ये क्षीपनमित्यर्थः।'



the Mit. Therefore it may be said that it is in line with the *Dayabhāga*. The Par. M. III. p. 547<sup>1510</sup> (another Madras authority) appears to follow the Mit., since it says: "ādya" includes 'ādhiyadanika' and what is acquired by inheritance, sale and the like." The *Vivādacintāmaṇi* (the leading authority in Mithillā) does not define *strīdhana* in general, but enumerates the several kinds of *strīdhana* described by Manu, Yaj., Viṣṇu, Kāt., and Devala and so is on a par with the *Dayabhāga*. The V. Mayūkha divides *strīdhana* into two kinds, *pārībhāṣika* (technical) and *apārībhāṣika* (non-technical). The former comprises properties expressly stated to be *strīdhana* by the sages, while the latter includes all other property belonging to a woman (except what is called technical) and acquired by her by partition or cutting (sewing or other mechanical arts).<sup>1511</sup> This division is peculiar to the V. Mayūkha. The *Viramītrodaya* (the paramount authority in the Benares school) agrees with Mit. as stated above.

It is beyond the scope of this work to go deeply into modern caselaw. But it is necessary to show how the Indian Courts have in modern times dealt with *strīdhana* as defined by the commentators. It may be said at once that the inclusion by the Mit. of property inherited by a woman or obtained at a partition under *strīdhana* has been totally discarded by the Privy Council for all provinces in India except Bombay<sup>1512</sup>. A woman may inherit property from a male, such as from her husband, father or son or she may inherit property from a female, that is, from her mother, daughter &c. Both these kinds of property

1510. आद्यशब्देन अध्यायान्तिकसम्पत्तिरित्यर्थः कयादिमात्रं च । परा. म. III. p. 247.

1511. यत्तु विमर्शेननुदाः विद्योक्तव्यं रिचयस्यै सममिति याज्ञवल्क्योक्तं तत्पारिभाषिकानि रिचयिनामकर्तृनादिद्वयपरम् । प. मयूख p. 150.

1512. Vide *Shoo Shankar v. Debi Sahai* L. R. 30 I. A. 202 (a case from Allahabad) for the proposition that according to the law of the Benares school even property inherited by a woman from a female is not her *strīdhana* and does not pass to her heirs. The principal grounds for the decision were that as regards property inherited by a female from males the rule deducible from the gloss of Viṣṇuśāstra had already been discarded and that even as to property inherited from a female the same rule had been applied in most High Courts (p. 208). Vide also *Balwantrao v. Baji Rao* L. R. 47 I. A. 213, 223 where the Privy Council approves of the Bombay High Court's decision in *Bhanu v. Raghunath* 30 Bom. 229 that a daughter succeeding to her father takes the property absolutely as *strīdhana* in the Bombay Presidency.

are stridhana according to the Mit., but the Privy Council has held as to both these kinds that they are not stridhana; e. g. if a daughter inherits property from her father or inherits the stridhana property of her mother, it does not become her stridhana, that on the death of the daughter, the property does not pass to her heirs, but to the next heir of the person from whom she inherited it. The Bombay school makes a distinction. If a woman enters a family by marriage and then inherits to a male of that family (as e. g. a widow succeeding to her husband, a mother to her son or a predeceased son's widow to her father-in-law), the property she inherits is not her stridhana, she takes only a limited estate in it and on her death it passes to the next heir of the male from whom she inherited. But if a woman inherits from a male belonging to the family in which she was born (e. g. a daughter succeeding to her father, a sister to her brother) or if a woman inherits property from a female, the property so inherited becomes her stridhana (in Bombay). As to property acquired by a wife or mother on partition<sup>1513</sup>, it has been held by the Privy Council that it is not stridhana even in provinces governed by the Mitākṣarā (including Bombay).

Kāt. (903) declares:<sup>1514</sup> 'whatever was given to a woman for wearing only on some occasion (or on condition) or with fraudulent intent by the father, brother or husband is not held to be stridhana.' The idea is that if the father or husband gives some ornament to his daughter or wife for wearing on some special occasion (*upādhi*) or if a father or husband in fraud of his co-parceners gives some family property to his daughter or wife it cannot become stridhana.

*Dominion over stridhana*.—What is stridhana and what dominion a woman has over stridhana depend on three things, viz. the source of acquiring the property, her status at the time of acquisition (i. e. whether she was a maiden or a married woman whose husband was living or a widow), the school of law by which she is governed. Certain verses of Kāt. and Nār. are the principal texts on this subject. Kāt. (905-907, 911)

1513. *Vide Dedi Mangal Prasad v. Mahadeo Prasad* 1. R. 39 I. A. 121, 131-132 (about the share of immovable property on partition not being stridhana and not passing on her death to her stridhana heirs).

1514. दत्तु इत्येवाक्षेपेन धर्मभ्रष्टैश्चान्यथापिना अलङ्कारविद्वत् पञ्च वृथावा-  
द्विजनापैर्दत्तं तल्लीधनं न भवतीत्याहुः कात्यायनः । पञ्च सोपार्थिकं दत्तं पञ्च योग्यज्ञेय  
म् । पित्रा भ्रात्रावपि पत्न्या न तल्लीधनमिष्यते । स्मृतिच II. p. 281. The verse is  
quoted by परा. मा. III. p. 549, एव. मयूख p. 154 (reads तत्र सोपार्थि पदद्वयं).



says:<sup>1515</sup> 'on obtaining wealth of the *saudāyika* kind it is declared (lit. desired) that women have independent power over it, since it was given by them (the kindred) as support (or maintenance) in order that they (women) may not be reduced to a terrible (or wretched) condition. It has been declared that women always have independence in *saudāyika* property as regards sale or gift at their pleasure and even in immovables (if *saudāyika*). A woman, when her husband is dead, may deal with the gift (of movables) given by the husband as she pleases; but she should preserve it as long as he is alive or she may spend it on his family. Neither the husband nor the son, nor the father nor the brothers have power to use or alienate the *striddhana* of a woman'. The verses of Kāt. about property acquired by labour or about the gift from strangers through affection and that of Nārada about the gift of immovable property made by the husband have already been quoted. From these texts it follows that a Hindu woman during her maidenhood<sup>1516</sup> could dispose of her *striddhana* property of every description at her pleasure, that during her widowhood she could dispose of every kind of *striddhana* including movable property given by the husband but not immovable property given by him and that a married woman whose husband was living could dispose of at her pleasure only that kind of property called *saudāyika* (i. e. gifts from relations except those made by the husband). Under modern decisions the distinction between *saudāyika* and

1515. सौदायिकं धनं याप्य स्त्रीणां स्वात्मन्यभिपद्यते । परमात्तदासुश्रमायां तद्वत्सुप्र-  
जीवन्तम् ॥ सौदायिकं सत्त्वं स्त्रीणां स्वात्मन्यप्यधिकीकृतम् । विजये चैव दाने च कथं स्थान-  
रेष्वपि ॥ भर्तृदायं सते पत्न्यौ निगमेत् स्त्री कथं प्रजाः । विद्यमाने तु संरक्षेत् अपत्ये सङ्कलेऽप्यथा ॥  
न यतां नैव च सुता न पिता ज्ञातरो न च । आदाने वा निमर्गे वा स्त्रीपतेः पराविण्यका ॥ कात्या.  
५. अथार्षा प. 732 (except भर्तृदायं &c.), स्मृतिच. II, p. 232, द्वापमान IV, 1. 23 and  
24 and २५. मनुस्मृ. p. 135 (except भर्तृदायं &c.), वि. र. pp. 310-11, 314 [all];  
वि. वि. pp. 139-140. On आसुश्रमायां वि. र. says, 'आसुश्रमं परमात्तदासुश्रमायां तेन परमादिकं  
विद्याभ्यासाद्व्यवसायः न भवत्येवमर्थम्' (p. 311); 'आसुश्रमं परमं अतुल्यं परमं' (स्मृतिच.).  
On सदा the स्मृतिच. says 'पत्न्यौ विद्यमानेपि स्वात्मन्यभ्युक्तं सर्वेष्वभिधानात्'. On  
भर्तृदायं the स्मृतिच. says 'भर्तृदायं भर्तृदत्तम् । तन्मरणे तु तद्वत्सुप्रजीवन्तम् अपत्ये  
नामे पत्न्यौ स्वात्मन्यभ्युक्तम् । विद्यमाने तु संरक्षेदित्यभिधानात् । संरक्षेत्तद्वत्सु प्रजीवन्तम्  
न निगमेदित्यर्थः'. वि. र. p. 311 and वि. वि. p. 140 take भर्तृदायं to mean  
husband's own property and the former says that महासुप्र and परिज्ञान  
explained it as स्त्रीपते given by the husband.

1516. So long as a Hindu maiden is a minor she cannot alienate her property or dispose of it by will; only her guardian can alienate it for purposes laid down in Huneoan Pershad's case; vide 6 Moo. I. A. 393 (cited above on p. 449).

non-saudāyika is retained,<sup>1517</sup> but the distinction between saudāyika given by the relations and that given by the husband is not kept.<sup>1518</sup> Now the woman's power to dispose off as she likes depends on the question whether the gift was meant to pass an absolute estate or a limited estate even if the husband was the donor. During marriage when the husband is living her dominion depends under modern law upon the character of the stridhana. If it is of the kind called saudāyika she can dispose of it by sale, gift or will as she likes without her husband's consent; but as to other kinds of stridhana property (such as gifts from strangers, property acquired by mechanical arts or property inherited) she cannot dispose of it without her husband's consent. If she disposes of it without such consent the alienation is void. According to the D. B. IV. 1, 20 property acquired by a married woman by mechanical arts or by gift from a stranger is subject to the husband's dominion during his life and may be taken by him even when there is no distress. No one else (except the husband) has got control over even such stridhana. After the husband's death, she can dispose of even non-saudāyika stridhana as she likes. But even as regards saudāyika the texts concede certain rights to the husband in certain circumstances. Yaj. II. 147 says: 'the husband is not liable to return to the wife her stridhana taken (i. e. used) by him in a famine, for (indispensable) religious acts, in disease, or when imprisoned (by the creditor or by the king or an enemy).'<sup>1519</sup>

1517. *Vide Shau v. Raghunath* 30 Bom. 229 (where it was held that property inherited by a woman from her father could not be bequeathed by her without the consent of the husband who survived her). Bequests to a woman are on the same footing as a gift for the purposes of stridhana. *Vide Damodar v. Parmanandas* 7 Bom. 155.

1518. *Vide Shailji Ram v. Charanjit Lal* 57 I. A. 282, 289.

1519. दुर्मिते धर्मकार्ये च स्वार्थी संपत्तिरोपके । सुदीने क्षीयते भर्ता न क्षिये दातु-  
मर्हति ॥ य. II. 147, on which Mitra. says: मकारान्तरेणापहस्य दद्यात् । भर्तृसंपत्तिरोपेक्ष  
कृत्वन्मया: क्षिया धनं केनापि दायादेन न हरीताम् । some like य. p. 546 read  
नानामो दातुम्; मि. र. p. 313, मि. चि. p. 141. मित्राद्वचनं p. 73 regard संपत्तिरोपके  
as an adjective of स्वार्थी; 'संपत्तिरोपकेति स्वाधिविशेषणं कार्णाकुष्ठामवाधके इति लक्ष्यः ।  
मि. चि. १, 'नानामो दातुमर्हतीत्यपि दारिद्र्यादिदुःखद्वारा सामर्थ्यं बोध्यम् । अस्मिन् सामर्थ्ये  
दुर्मितादिपरीतमप्यवश्यं देयम् । एतावतैव वचनोपपत्तौ सामर्थ्येन दानमिच्छयेत्यस्य कल्प-  
यितुमर्हतात् । पतिवहनादावपि वस्तुरेव पत्नीधनग्रहणाधिकारः । पतिद्वारं चेष्टया नान्य-  
थेति ज्ञेयम् । य. p. 546.



Kāt. (914)<sup>1520</sup> has a similar verse which says that he may return stridhana wealth if he chooses to do so when it is used by him in a disease or in calamities or when harassed by creditors. Kaut. (III. 2 p. 152) is closely similar to Yāj. and adds that the woman can spend it without blame for the maintenance of herself, her son and daughter-in-law or when the husband has gone abroad without making provision for the maintenance of these. Kaut. (III. 2. p. 152) further provides<sup>1521</sup> that there should be no complaint (by the wife) as regards the expenditure of stridhana made more than three years before by joint action of the husband and wife when they have given birth to two children (or to twins) and when the marriage has been in the most approved forms (*brāhma* and the other three), that when stridhana has been expended by (the husband and wife) that are married in the *gāndharva* or *āsura* form both should be made to restore it with interest and that what is expended when the marriage is in the *rūkṣa* or *paśūka* form the expenditure of stridhana should be dealt with as theft. The meaning of 'mithunam prajātayoḥ' and 'trivaraṣopabhuktam' in Kaut. is not quite clear. It is probable that Kautilya lays down a rule of limitation. If more than three years are allowed to pass without complaint, then no complaint made later (than three years after the expenditure) would be entertained. So also if there be no children of the marriage and the husband expends stridhana without objection by the wife then also no complaint would be entertained as the restraint on alienation of stridhana by the husband and wife was meant for the benefit and advancement of the children. None of the later smṛtis like those of Yāj., Nār. or Kāt. makes these distinctions and so Kaut. probably represents an early stage in the evolution of the husband's dominion over stridhana. These later smṛtis hold that the husband and wife may be entirely separate as regards their properties and as a general rule the husband's debts are not binding on the wife's properties nor are the wife's separate debts binding on the husband or his properties (Yāj. II. 46,

1520. स्वाधितं स्वसनस्य च धनिकस्योपपिहितम् । ज्ञात्वा निवृत्तं धनं तदा दद्यात्तले-  
च्छया तु सा ॥ कात्या. ५. by अपराज्ज p. 755, स्मृतिसू. II. p. 283, वि. र. p. 513,  
वि. वि. p. 141 ; तद्वत्समस्तुतुषाभर्तुनि स्वात्मानि विधाने च भार्याया भोक्तुमर्हति । वलि-  
रोधकापधि-दुर्भित-भगवतीकारे धर्मकार्ये च वक्तुः । अर्थशास्त्र III. 2 p. 152.

1521. सम्भूत वा दम्पत्योर्मियुते प्रजातयोश्चिन्तयितुं च धनितेन विवाहेषु नाह-  
तुर्नीत । गन्धर्वाद्युपपत्तुं सहादिकमुभयं दद्यात् । पशुमप्येताद्युपपत्तुं स्तेनं दद्यात् ।  
अर्थशास्त्र III. 2. p. 152.

Vism. Dh. 8. VI. 31-32). But the same smṛtis make it clear that under certain distressing circumstances the wife's separate property was liable for the maintenance or debts of the husband. The Mit. expressly states<sup>1521a</sup> that if the husband uses his wife's stridhana under any other circumstances (than those specified by Yaj II. 147 and Kat.) then he has to return it, that no relation except the husband has any right to use a woman's stridhana during her lifetime even in distress or disease &c. and relies on Manu VIII. 29 which requires the righteous king to award the punishment for theft against such relatives as appropriate the wealth of women. The Sm. C. and V. Mayūkha follow the Mit., but the V. R. and V. C. hold that Katyāyana's verse applies not only to the husband, but also to the son, father and brothers of the woman. Kat. (912-913) provides<sup>1521a</sup> that if any one of the four persons (q. in n. 1515 above) forcibly consumes stridhana he should be made to return it with interest and should be also liable to fine (or punishment) and that if any one of these consumes stridhana amicably after securing her consent then he would be liable to return only the principal amount, when he becomes well-off (i. e. able to pay). Devala<sup>1522</sup> also states, 'if the husband makes a gift of stridhana without cause or enjoys it, he must pay it back with interest, but he may use the stridhana of his wife for relieving the distress of a son (and also of the family, acc. to V. Mayūkha). Kat. (908)<sup>1523</sup> adds a special rule, 'if the husband has two wives and he does not reside with one of them (i. e. neglects her), he should be forcibly made to return (the stridhana of his neglected wife) by the king even though she bestowed it upon him through affection.' The texts of Kat., Devala and Nār. quoted above about the dominion of the woman over her stridhana and about the husband's power over it are

1521a. यदि लोकतरो लोपो लीयते भगवेद् वलात् । सङ्घटिकं स दाप्यः स्याद् वृष्य चैव समाश्रयात् । तदेव पद्यवृत्तात् भगवोर्नीतिपूर्वकम् । मूलमेव पदाप्यः स्याद्व्यस्री धनवान् भवेत् ॥ कात्या. q. by अपराकं p. 753, द्वापमान IV. 1. 24 p. 78, स्मृतिच. II. p. 282.

1522. इषां मोक्षे च भोगे च लिपे दद्यात्सङ्घटिकम् । इवार्थहरणे वापि लीयते भोक्तु मर्हति ॥ देवल q. by स्मृतिच. II. p. 283 (इषवर्णं कुटुम्बोपलक्षणार्थम्), अपराकं p. 753, च. मृच्छ p. 156.

1523. अथ चेत्स द्विभार्यः स्यात् च तौ वजरे हुतः । वीर्या निवृद्धमपि चेत्पतिदाप्यः स तद् वलात् ॥ कात्या. q. by अपराकं p. 753, द्वापमान IV. 1. 24 p. 78, स्मृतिच. II, p. 283. The ch. m. p. 156 ascribes this verse to देवल.



authoritative in all schools even now. Manu IX. 199<sup>1524</sup> provides: 'wives should not spend (for their own benefit) from the property of their families which is common to many, nor from their own property without the husband's permission.' The V. Mayūkha interprets this as meaning that she has no independent power even over ādhivedanika and the like, but this would be opposed to the express texts of Kāt., Vyāsa and Devaia. Therefore the words must be taken as only recommendatory.

Kāt. (916) delivers a special rule viz. 'stridhana'<sup>1525</sup> which was promised (to a woman) by her husband should be paid to her as a debt by the sons (i. e. by her own sons or stepsons) provided she resides in the husband's family; she should not reside with her paternal family.' The Sm. C. and V. P. (p. 546) explain that even grandsons and great-grandsons are liable to pay just as sons are. According to Kāt. as understood by the Sm. C. and others a wife who is full of evil acts, is immodest, wastes property and is given up to adultery, does not deserve (to dispose of) stridhana and V. P. and V. C. explain that it may be taken away from her in such a case.<sup>1526</sup> In modern times this rule of forfeiture of rights would not be enforced by the courts as regards stridhana. Some explain this verse as referring to the widow as heir and separate the words as 'stri dhanam.'<sup>1527</sup> Vide *Ganga v. Ghasia* 1 All. 46 (F. B.), 48-49.

*Succession to Stridhana.*—The several schools of Hindu Law differ from each other perhaps more widely on this subject than

1524. न निहारि स्त्रियः कुतश्च कुरुवाद्भवद्भूमधमत्तु । स्वकादपि च विमोक्षि स्वस्य भर्तुषोक्तया ॥ मनु IX. 199. This verse is variously explained. कुल्लुक, राघवा-नन्द and others explain निहारि as 'रत्नालंकाराद्यर्थं धनसङ्ग्रहे', while सर्वज्ञानारायण and स्व. मयूख explain as 'स्वयं' and सर्वज्ञ explains सत्कात् as 'सत्पत्न्यासाधारण-धनादपि स्त्रीधनमपिरिक्तम्'.

1525. सर्वो यतिष्ठत् देवसूयवलीधनं ह्यते । विदेह भर्तुकुले परं न सा पितृकुले नसेत् ॥ कात्या. q. by स्मृतिच. II, p. 283 (first half), वि. र. p. 514, वि. वि. p. 342. The स्व. m. p. 153 quotes the first half as देवला.

1526. अवचारादिपादुका निर्लज्जा वार्धमाश्रिता । स्वभिचाररता या च स्त्रीधनं सा न चार्हति । कात्या. q. by मेधा, on मनु VIII. 23 (without name), स्मृतिच. II, p. 283, वि. वि. p. 141-142, स्व. m. p. 157, स्व. q. p. 343. 'या पुनः अतिदुष्टा स्त्री सा स्वधन-मनिवृद्धमपि विनिषोक्तुं मर्हतीत्याह स एव' स्मृतिच.

1527. For a comparison of the ancient and mediæval Hindu Law of stridhana with the Roman, French and English law, vide Bannerjee's 'Marriage and stridhana' pp. 394-399.

on any other. But one thing is generally common to all schools ✓ viz. that as regards succession to *stridhana* daughters are preferred to sons, though in later days sons were introduced by some writers as heirs along with daughters or even as preferable to daughters for certain kinds of *stridhana*. This was probably due to the fact that the value of *stridhana* property became considerable in later times and society which held to the doctrine of the dependence and inferior position of women could not tolerate the idea that large estates should go to women alone. The causes of the variance among writers on the devolution of *stridhana* are historical. The text-writers wrote at different times and in different countries and probably reflect the popular sentiments of their own countries and times tinged now and then by personal predilections also. The digests sometimes expressly say that their interpretation follows the usage of their times (*vide* V. Mayūkhā in note 1529 below).

The succession to *stridhana* varies according as the woman is unmarried or married, according as the marriage was in an approved or an unapproved form, and also according to the species of *stridhana* and the school of law to which she is subject.

First, the important texts of the *śmṛtis* on succession to *stridhana* may be brought together. The oldest extant text is that of *Gaut.* 28.22 which provides,<sup>1528</sup> '*stridhana* devolves (first) on daughters; (in a competition among daughters) it goes to those that are unmarried (*apṛatta*, lit. not given away in marriage) and (in a competition among married daughters) to those that are not well provided for (i. e. that are indigent).' *Manu* (IX. 192-193) provides: 'when the mother dies all the full brothers and full sisters should equally divide the mother's estate. Even to the daughters of those daughters some thing should be given (that is) as much as would be seemly out of the estate of their grandmother on the ground of affection'. In *Manu* IX. 195 it is said that the six kinds of *stridhana*, as also *anyādheya stridhana* and gifts made by the husband through affection, should go to her progeny if she dies in her husband's lifetime. The verses of *Manu* (IX. 192-3) are variously explained by the commentators, *Sarvajña-Nāṛaṇa* holding that mother's estate means estate other than technical *stridhana*. Most of them rely on a text of *Bṛ.* and

1528. श्रीधर इतिदृष्टान्तमन्तानामन्तिष्ठितानां च । नो. 28. 22.



hold that full brothers and unmarried sisters succeed together and married sisters (i. e. daughters of the woman whose heirs are to be found) get some trifle ( $\frac{1}{4}$  of each brother acc. to Kullūka). Manu IX. 196-197 further provide that when a woman was married in one of the five forms of marriage viz. Brāhma, Daiva, Arṣa, Prājāpatya and Gāndharva and died without issue her stridhana goes to her husband and if she was married in the Āsura and the other two forms it went, if she died issueless, to her mother and father. Yāj. II.<sup>1529</sup> 117 provides that daughters take the stridhana estate of their mother and on failure of them the (male) issue. In II.<sup>1530</sup> 144 Yāj. again says that stridhana goes to daughters, but that if the woman dies without issue then it goes to the husband if she was married in one of the four forms (brāhma, daiva, arṣa, prājāpatya) but to her parents if she was married in the other four forms. Vṛsp. Dh. S. (17. 19-21) and Nār. (dāyabhāga, 9) contain the same rules as Yāj. II. 144-145, while Nār. (dāyabhāga 2) states that the mother's wealth should be divided among the daughters and in the absence of daughters the latter's issue takes it. Śāṅkha-Likhita<sup>1531</sup> declare that the mother's estate is taken in equal shares by the full brothers (sons of the deceased mother) and their unmarried sisters. Br.<sup>1532</sup> (S. B. E.

1529. मातुर्दुहितरः शेषपुत्रास्तस्य कलेऽन्वयः । वा. II. 117 on which the *mitra* says, 'दुहितृनामभावे अन्वयः पुत्रादिपुंल्लिङ्गिणाद्' ; some construe the word अन्वय as meaning the issue of the daughters (i. e. daughter's daughters and daughter's sons). Vide *md. n.* p. 152, "यस्य पुत्रास्तस्य" 'मातुर्दुहि ... अन्वयः' इति तथाप्यन्वयपदं कथास्तत्परिपरमिति केचित् । परे तु दुहितृभावे पुत्रा एव लक्ष्यन्ते, नारदीये तदा मातुरेव परामर्शोक्तिराणाहुः । आचार्यसंज्ञायां चापि यज्ञः (1) नारद (द्वारभाम, 2) is मातुर्दुहितरोरन्वये दुहितृणां तदन्वयः ; about which the *mitra*, on वा. II. 145 remarks 'तच्छब्देन संनिहितदुहितृपुत्रपरामर्शात्' . The *md. pr.* (p. 667) explains नारद as मातुर्दुहितरं दुहितरं आप्तपुत्रतदभावे दुहितृणां वंशिशैल्यां तदभावे तदन्वये ये जाता दुहितृचारतेनानिरूप्यः ; the *विवादचन्द्र* p. 73 says 'दुहितृनामभावे तदन्वयस्तद्व्याप्तिविभजेदित्यर्थः' ; मातुरन्वय इति वात्तकयः ।

1530. अर्थापानामवसि वाम्प्राप्तद्वारापुत्रः । अन्वयः श्रीधर भर्तृजांश्चादितु चतुर्धमि । दुहितृणां यज्ञा चेच्छेदेषु पितृगतिं तद् वा. II. 144-145 ; चाद्यादितु चतुर्धमि विवाहेष्वपानागमनार्थां पदार्थः । शेषेषु च पिता वरेत् । सर्वेष्वेव यज्ञायां पदार्थेन तद् दुहितृगतिम् । निष्पद्यन्तुश्च 17. 19-21 ; श्रीधरे तदप्रधानां मर्त्यामववजातु तु । चाद्यादितु चतुर्धाः पितृमासीतरेषु च ॥ नारद (द्वारभाम, verse 9) .

1531. समं सर्वं सोढुं मातुर्कं रिषमर्हन्ति कुमार्यश्च । अङ्गुलिखित 9. by द्वारभाम IV. 24 p. 79, परा. मा. III. p. 551, वाट्मन्ही on वा. II. 145, हरदत्त on नी. 22. 22 reads समं ... द्वायमहाः श्रीकुमार्यश्च .

1532. श्रीधरे द्वाद्वारपानां दुहिता च तद्वंशिनी । अन्वया चेत्समुद्रा तु छन्ति मातृमात्रकम् । बृह. १. by स्मृतिच. II. p. 285, हरदत्त on नी. 29, 22, द्वारभाम IV. 2. 3 p. 70 (अपर्यपदं पुत्रपरं विधायमजाभिर्दुहितृभिः सह मातृधनविभागे), परा. मा. III. p. 552 (reads सा न मातृकम्), विवादचन्द्र p. 75.

33 p. 383 verse 87) declares, 'stridhana goes to her progeny, but the unmarried daughter is preferred, while the married one gets only some trifle as a token of regard'. Parāśura holds that the unmarried daughters take all the stridhana, but in a competition between married daughters alone and sons they all take equal shares. Devaḥ <sup>1533</sup> states, 'on the death of a woman her stridhana is taken in equal shares by her sons and daughters; if she leaves no issue it would be taken by her husband, mother, brother or father'. Pāraskara <sup>1534</sup> (q. by Par. M. III. 552) states that stridhana devolves on the unmarried daughter, that the son does not get it, but that he shares equally with a married daughter. Kauṭ. <sup>1535</sup> (III. 2 p. 153) prescribes that if a woman dies during her husband's lifetime her sons and daughters divide her stridhana; if she has no son then daughters divide it, on failure (of both sons and daughters) the husband takes it and that the sūka, anyādhya or any other kind of stridhana given by her relatives is taken by her relatives. Kātyāyana <sup>1536</sup> (917-920) whose treatment of stridhana is the most detailed of all smṛti writers has the following verses on succession to stridhana: 'Sisters whose husbands are living should share with their brothers the stridhana (of their mother); this is the rule of law about stridhana and partition (among brothers and sisters) is prescribed. On failure of daughters the (stridhana) wealth devolves on sons (of the deceased woman); the wealth given to a woman by her kinsmen (paternal or maternal) goes in the absence of the kinsmen (that gave it) to the husband.

1533. सामान्यं पुत्रकन्यानां वृत्तायां स्त्रीधनं स्त्रियाम् । अपत्याया हरिजनां माता धात्रा पितापि वा । देवह. q. by द्वापभाग IV. 2. 6 p. 79, स्प. नि. p. 466, वात्स्यहरी on वा. II, 145.

1534. अन्तर्गतास्तु दुहितः स्त्रीधने परिकीर्तितम् । पुत्रस्तु नैव सम्भवे वृत्तायां तु सन्तान-भाक् । पारस्कर q. by परा. मा. III. p. 352 (नृपतिद्वितीयदुहितुलिवचम्), स्प. नि. p. 463. Is it पराशर?

1535. जीवति भर्तुरे वृत्तायाः पुत्रा दुहितरश्च स्त्रीधनं विभजेत् । अपत्याया दुहितरः । तदभावे माता । ... सुलक्ष्मणाधिकरणवद्धा वस्तुभिर्दत्तं वान्धवा हरिः । अर्धशास्त्र III. 2, p. 153.

1536. भगिन्यो वान्धवैः सार्धं विभजेत् सन्तानकाः । स्त्रीधनरयं विभवं विभागस्तु यत्कल्पितः । दुहितुणामभावे तु रिश्वे पुत्रेषु वदन्वेत् । वस्तुधने तु वस्तुनामभावे भर्तुणामि तत् । पितृणां चैव यद्वत् दुहितुः स्यात्तं धनम् । अन्तर्गतास्तीतायां धनानि तु सर्वदा । आसुरादिषु गृह्णन् स्त्रीधने पितृकं स्त्रिया । अभावे तद्वृत्तायां मातापितृयोस्तद्विषये । कात्या. q. by अपराक्ष p. 721 (the first two only), स्मृतिच. II. pp. 385-387 [all except पितृणां &c.], नि. र. p. 318 and नि. चि. p. 143. [first two]: द्वापभाग IV. 2. 12 p. 92 has the verse पितृणां (ascribes it to बुद्धकाल्याणन); स्प. म. p. 162 reads वृत्तानि for भर्तुणामि.



Whatever immovable property was given by the parents to their daughter always goes to her brother if she dies without issue. Whatever wealth was obtained by a woman from her parents in the forms of marriage beginning with *śūra* is declared as going to her parents on failure of her progeny.<sup>1537</sup> The first two verses are apparently in conflict and must be read with Gaut. 28. 22. So probably the following propositions were laid down by Kat. viz. (1) unmarried daughters are preferred; (2) married daughters whose husbands are living share along with their brothers, if there be no unmarried daughter; (3) widowed daughters take only if there are no daughters whose husbands are living or if there are no sons; (4) wealth given by paternal and maternal kinsmen goes to them and on failure of these, to the husband; (5) immovable property given by parents goes to the brother of the woman on failure of issue; (6) wealth given in the *śūra*, *rīkṣa* and *paisāca* forms goes to parents on failure of issue. Yama has a verse very similar to Kātyāyana's about a woman married in the *śūra* and the following forms. The commentaries and digests make valiant efforts to reconcile the conflicts among the smṛti texts quoted above. It is not quite necessary to go into that question here in detail for fear of encumbering this work too much.

How the devolution of stridhana was dealt with by the commentators has now to be seen. They all prefer daughters to sons for certain kinds of stridhana. Why the devolution of stridhana property should be different from that of the property of a male is not clearly explained anywhere. The Mit. on Yaj.<sup>1538</sup> II. 117 gives the reason that woman's property goes to the daughter because in her more particles of the mother's body inhere than in the son. Probably the daughters were preferred as heirs to stridhana as a sort of equity, when sons were allowed to exclude daughters in the inheritance to the father's wealth.

According to the Mit. there are two lines of succession to stridhana, one for *śulka* and the other for all other kinds of stridhana. *Śulka*, acc. to the Mit. that quotes Gaut., devolves first

1537. आशुरादिषु यद् दत्तं विवाहेषु बद्धिपते । अपञ्जामन्मितायां पितेव पुं धने  
होत् । यम. q. by सृजिष. II. p. 286, द्वापभाग IV. 2, 28 p. 88.

1538. मातृपुत्रदुष्टे पुत्रैरेवापञ्जनीये न पुत्रितुमिः । अजापञ्जिं तु धने पुत्रितो  
पुत्रीपुत्रिणि । पुत्रं चेतत् । पुमान् पुंसोपिके ह्युक्ते श्री भवत्यपिके स्त्रियाः—इति सप्तम्यपञ्जनी  
पुत्रितुष्टे मातृपुत्रं श्रीधने पुत्रितुमिः । पुत्रधने पुत्रमामि पित्रपञ्जनीं पुत्रेषु मातृपुत्रत् ।  
मिता, on ya. II. 117. पुमान्पुंसो &c. is मत्. III. 49.

on the full brothers, then on the mother.<sup>1539</sup> Some like the Subodhini, the Dipakalika, Haradatta on Gaut. 28. 23 hold that it devolves on the mother first and then on the full brothers; but many works such as the Dayabhāga IV. 3. 28 (p. 95), Sm. Cr., Par. M., V. P., V. C. follow the Mit. It is somewhat strange that the Madanapārijāta p. 668 (which was really composed by the author of the Subodhini in the name of his patron Madanapāla, holds that the *śulka* is first taken by the brothers and then by the mother. This raises a doubt whether the printed Subodhini is correct or whether the author changed his opinion.

As regards succession to the property of a maiden there is no difference at all between the Mit. and other works. The Mit. quotes a text of Baudhāyana<sup>1540</sup> that the wealth of a deceased maiden first devolves on her full brothers, then on the mother and then on the father. The V. P. adds that on failure of the father the maiden's wealth goes to the parents' nearest sapinda.<sup>1541</sup> Yāj. II. 146 provides that if a girl who had been promised in marriage dies before marriage, the intending bridegroom was entitled to take back the *śulka* or other gifts

1539. भगिनीशुल्कं सोद्वर्णानामुर्ध्वं मातुः पूर्वं चैके । मी. 28. 23-24; मितः (on पा. II. 143) says, शुल्कं तु सोद्वर्णानामेव । मातुरभावे सोद्वर्णं दृष्टीदुरित्यर्थः । हजोधिनी on पा. II. 143: 'शुल्कं तु सोद्वर्णानामेव । भगिनीशुल्कं सोद्वर्णानामेति यौतमरचनान्तोद्वर्णभावे मातुः । ऊर्ध्वं मातुरिति तद्वचनादेव । पूर्वं चैके इति तु परमतम् ।' स्व. प. p. 553; शुल्कं तु सोद्वरा एव दृष्टीयः । तथा च नातमः । भगिनी ... मातुरिति । दुरिषादिषु यौतमरचनेषु विद्यमानेष्वपि भगिनीशुल्कं सोद्वरा एव दृष्टेदुरित्यर्थः । मद्. पा. p. 668: 'ऊर्ध्वमिति मातुर्मरणादुत्तरमित्यर्थः । कश्चनतद्वत्त्वेन । ... माता चात्र भगिनेष्वेव । तथा च तद्वत्परमातुरभावे दुरिषादिषु यौतमरचनेषु सत्यपि त्वभगिनीशुल्कं सोद्वरा एव दृष्टेदुरित्यर्थः । बालम्भाही (स्व. p. 257) : ऊर्ध्वं मातुः परतावित्यर्थः । मातापिघोरतु सद्भावे तयोरेव । दीपकसिद्धा.

1540. रिक्थं सुतायाः कन्याया दृष्टीयः सोद्वरातद्वभावे मातुस्तद्वभावे पित्रुरिति बीम-पत्तमरणात् । मितः on पा. II. 146; the *दायमान* makes of this a verse as रिक्थं... सोद्वराः स्वपद् । तद्वभावे भरेणानुस्तद्वभावे भरेयितुः ॥ The *मदनरत्न* (folio 106a) reads II. as रिक्थं ... सप्तम् । ... तद्वभावे पितुर्भवेत् ॥ मातापिघोरभावे तस्यायसम्भवातिः । स्व. प. p. 552. The above passage of the Mit. is referred to in *Gandhi Maganul v. Bai Jeeab* 24 Bom. 192 (F. B.) at p. 211 (where it was held that a paternal grandmother in Gujarat inherited the wealth left by her maiden grand-daughter in the absence of nearer heirs, that she took an absolute interest and that on her death the property goes to her heir and not to that of the grand-daughter).

1541. Vide also *Janglshai v. Jetha Appaji* 32 Bom. 409, 412 and *Vithal v. Bala* 60 Bom. 671, 677 for instances of sapindas of the parents inheriting to the *stridhana* of a woman dying respectively as a maiden or as a woman married in an approved form of marriage.



made by him after deducting his own expenses and those of her family.

The Mitākṣarā order of succession for all kinds of stridhana, other than *śulka* and maiden's property, is as follows: (1) unmarried daughter; (2) married daughter who is indigent; (3) married daughter who is well provided for; (4) daughter's daughters; (5) daughter's son; (6) sons; (7) son's sons (here also the rule of *per stirpes* applies); (8) husband (if the woman was married in one of the four approved forms); (9) sapindas of the husband in the order of propinquity; on failure of any sapinda of the husband, her mother, then her father and then the sapindas of the father (before it goes to the Crown). But if the woman was married in one of the unapproved forms, then on failure of her descendants her stridhana went to her mother, then to her father and then to the father's sapindas in the order of propinquity. On failure of the sapindas of the father it would (by analogy) go to her husband and then to his sapindas (before going to the Crown). When grand-daughters directly inherit the stridhana of their grandmother they take *per stirpes* (acc. to the Mit. which quotes Gaut. 28. 15), if they are the daughters of several daughters.<sup>1542</sup> The Mit. (on Yāj. II. 145), Aparārka (p. 721) and several others provide (following Manu IX. 198 = Anuśāsana 47.25) that if a woman of a lower caste dies issueless leaving stridhana, then the daughter of her co-wife of a higher class inherits that stridhana and on failure of such step-daughter, the son of the latter inherits. It may be noted that as regards succession to stridhana, the rule of representation which holds good in relation to succession to males does not apply. When a male dies leaving separate property and a son and a grandson (son of a predeceased son) both succeed together, the grandson representing his deceased father. But if a woman possessed of stridhana dies having only a son and a predeceased son's son, the son will take the whole of the stridhana excluding the son's son. Vide *Bai Raman v. Jagjivandas* 41 Bom. 618.

It is not possible nor necessary to deal exhaustively with the devolution of stridhana according to the various schools of Hindu Law. But a few indications from the important text

1542. तासां विप्रमातृकाणां विप्रमायां सप्तहाये मातुहारेण भागकल्पना । प्रतिमातृद्वये सा स्वर्णं भागविदोषः—इति यौतनस्मृत्याम् । निता. on वा. II. 145.

books having authority in the different provinces will be offered. According to the Sm. C. ( which is the leading authority in Madras after the Mit. ) stridhana includes only those kinds of property that are so described in the smṛtis ( i. e. only technical stridhana ) and the lines of devolution are as follows : (1) Śulka devolves in the same way as laid down by the Mit. cited above ( Sm. C. II. p. 287 ) ; (2) Yantaka devolves on unmarried daughters first ( Sm. C. II. p. 285 ) ; (3) Anvādheyaka and Bhartṛdatta pass to sons and married daughters whose husbands are living, all inheriting together in equal shares ( Sm. C. II. p. 284 ) ; (4) other kinds of technical stridhana such as adhyagni &c. pass first to the maiden daughters and married daughters who are *apratishṭhita*,<sup>1343</sup> then to married daughters that are provided for ; then to daughter's daughters, then to daughter's sons, then to sons, then to son's sons &c., then to the husband or father ( according to the form of marriage ). The Madras High Court follows the Mit. ( in preference to the Sm. C. ) as to the devolution of Anvādheyaka and Bhartṛdatta and holds that certain kinds of non-technical stridhana ( such as gifts by strangers during coverture ) devolve acc. to the rules of the Mit. Vide *Salem v. Lutchmna* 21 Mad. 100.

The Vivādacintāmaṇi, the leading authority in Mithila, restricts stridhana to the technical stridhana recognized by the smṛtis and lays down the devolution of it as follows : (1) Śulka<sup>1344</sup> ( defined as property received by a woman at the time of her marriage, if in an unapproved form ) passes as under the Mit. cited above ; (2) Yantaka passes first to unmarried daughters, then in the way laid down by the Mit. for all stridhana ; (3) all technical stridhana other than the two preceding varieties passes to sons and unmarried daughters together, then to sons and married daughters jointly, then to daughter's daughters, then to daughter's sons and then as under the Mit. system ( for stridhana in general. )

The Vyavahāramayūkha which is held to be of paramount authority in Gujarat, Bombay Island and Northern

1343. The word अप्रतिष्ठिता is explained by the Sm. C. as follows. ' अप्रतिष्ठिता अनपत्या निर्धना दुर्भया विधवा वा । एवमपरासौत्रसारान् गौतममन्त्रेण व्याख्यातम् । अथ विज्ञानेश्वरकृता व्याख्या । देवा स्वदुष्टिनायेनाभ्याहाराविकल्पताम् । ' स्मृतिच. II, p. 283. नि. वि. p. 147 also says ' अप्रतिष्ठिता अनपत्या निर्धनमर्त्या दुर्भया चेति शब्दावसृज्य । '

1344. गौतमः । भलिनीकृत् सोऽर्थांशान्पूर्वं मातुः । पूर्वं चैवदेते । आहुरादिनिषाद-  
व्यपङ्गवाविवर्जनेत् । नि. वि. p. 143.



Konkan<sup>195</sup> proposes various lines of succession to stridhana. Its treatment is based on the Sm. C. and the Madanaratna. It first divides stridhana as stated above into technical (pāribhāṣika) and non-technical (apāribhāṣika). The first is subdivided into four classes for the purpose of inheritance; (I) sūka which passes as stated above under the Mitākṣarā; (II) yautaka goes to unmarried daughters, ( if there be no unmarried daughters )

1245. For the territory in which the V. Mayūkhā is supreme; vide *Lallubhai v. Manāvarbai* 2 Bom. 322 (F.B.) at p. 418, *Jantibai v. Sandra* 14 Bom. 612 at pp. 623-24; *Vyas Chimanlal v. Vyas Ramchandra* 24 Bom. 367 (F. B.) at p. 373. How the Vyavahāramayūkhā composed by a Mahā-rāṣṭra brāhmaṇa whose family had settled at Benares came to be regarded as a work of high authority in Gujarat is explained in *Lallubhai v. Manāvarbai* 2 Bom. 322 at pp. 418-419 and in *Bhagirathibai v. Kahuji* 11 Bom. 285 (F. B.) at pp. 294-95. As there is divergence between the views of the Mit and the Mayūkhā in the rules of succession, it becomes a matter of great practical importance to settle with precision the exact limits in Northern Konkan up to which the Mayūkhā must be regarded as a work of paramount authority. It has been judicially decided that Karanja, an island opposite the Bombay harbour, is governed by the Mayūkhā (in *Sakharām v. Sindhai* 3 Bom. 353), that Mahad, the southernmost Taluka of the Kolaba District, is not so governed and that the predominance of the Mayūkhā cannot be taken farther south than Chev and Nagothna in the Kolaba District (vide *Narhar v. Bhanu* 40 Bom. 621). Similarly difficult questions arise whether Kathiawar which is quite contiguous to Gujarat and some territory bordering on Gujarat towards the north or east is governed by the views of the Mayūkhā in preference to those of the Mit. Some parts of Kathiawar which were (and even now are) under the domination of the Gaikwad of Baroda may, on the analogy of the grounds on which the Mayūkhā is held to be of paramount authority in Gujarat, be deemed to be governed by the Mayūkhā. It appears to me that the tendency of courts should be to restrict the extent of the territory in which the Mayūkhā is supreme and to hold that everywhere the Mitākṣarā is supreme, except in those territories where the Mayūkhā has been expressly recognised as supreme by the feudatory States contiguous to Gujarat or by judicial decisions. The Mit is the paramount authority in the whole of India except in Bengal; therefore on the analogy of the maxim that a general rule is applicable and is supreme in all cases except where an exception clearly covers the matter (अपवादविषयपरिहारोऽसमस्तस्य व्यवहितिः) districts outside modern Gujarat but bordering on it should not be held to be governed by the Mayūkhā.

then probably to the married daughters; (III) *anyādheya*<sup>1545a</sup> and *bhatpṛiti-datta* (husband's gift of affection) are inherited by sons and unmarried daughters together in accordance with Manu (IX. 192 and 193), (if there be no unmarried daughters) by sons and married daughters, then daughter's issue, then son's sons; (IV) other<sup>1546</sup> kinds of technical stridhana devolves as under the Mit.; (V) non-technical<sup>1547</sup> stridhana is inherited in the following order; sons, son's sons, sons' sons' sons, daughters, daughters' sons, daughter's daughters. When there is no issue of the woman the succession depends in all cases as under the Mit. on the question whether the woman was married in an approved or an un-approved form. The V. Mayūkhya employs language somewhat different from that of the Mit. in speaking of the inheritance to stridhana when a woman dies without

1545a. Vide *Sitabai v. Vasantrao* 3 Bom. L. R. 301 (where a long passage from the V. Mayūkhya is quoted in translation and it is held that *anyādheya* includes gifts or bequests from parents after marriage as well as from the husband and that sons and daughters succeed equally to *anyādheya*); *Dayaldas v. Savitribai* 34 Bom. 385 (F.B.), where it was held that a passage of the Mayūkhya wherein the view of the Mit. was first stated and then the view of others really meant that the latter was the view of the Mayūkhya, that sons and daughters inherited *anyādheya* together and that if there were both married and unmarried daughters, the unmarried daughters and the sons inherited together. सुतायाः श्रिया अथ दुहेदुहेदुभिश्च मापेन साहचर्यम् । तथा च सवतुः—नवतुः ... सप्तमानवः । एतस्याप्येवमनुमीतिद्वयमिति चेत् । एतद्विधिवत्तद्विधेः परितोत्तरपरिगीतद्वयसमवाये विज्ञेयमाह बृहस्पतिः । स्त्रीयने स्वादुपपत्तां ... । अदत्तामान-भावे यत्तान्मादेवामिमांस्तुभिः सह विनश्य साहचर्यमिष्याह कात्यायनः । मनुवरण (folio 103 b). Vide *sup. n.* text pp. 157-58 for the two views. It will be noticed that the Mit. construes the verse of Manu distributively i. e. sons take equally when they succeed and daughters do so when they succeed and that Manu does not mean that sons and daughters inherit simultaneously.

1546. अन्वयेयमनुमीतिद्वयान्मन्वदुपपत्त्यादिस्त्रीयने दुहितर एव दुहीतुः । तद्युक्तं नवतुःसप्तमानवाये सप्तपत्ता एव दुहीतुः । मनुवरण (folio 103 b) : अन्वयेयमनुमीति-द्वयमिहे दूर्गोक्ते वारिमादिहे स्त्रीयने त विज्ञेयमाह सीतनः—स्त्रीयने ... अपतिहेतवान् च—इति । *sup. n.* p. 159.

1547. Vide *Manilal Rewadat v. Bai Rewa* 17 Bom. 758 (as to inheritance of non-technical stridhana) where it was held that as regards stridhana under the Mayūkhya the woman is recognized as a fresh source of devolution, that the words 'sons and the rest' mean no more than sons, grandsons and great-grandsons, that as regards property which does not class as *pāribhāṣika* stridhana, the sons and the rest take precedence over the 'daughters and the rest' (i. e. their issue), that falling sons and daughters the heirs to *pāribhāṣika* stridhana and *apāribhāṣika* stridhana are the same, save that as between male and female offspring the latter have a preferential right as to *pāribhāṣika*, while the former have a similar right as to *apāribhāṣika*, परिभाषिकाकारिके मातृयने दुहितृसमो दुवादप एव लभेत् । *sup. n.* p. 160.



estate. But it has now been judicially held that both mean the same thing<sup>1548</sup>.

In the *Dāyabhāga* school the devolution of various kinds of stridhana according to the *Dāyabhāga* and D. K. S. is as follows: (1) *śulka* devolves<sup>1549</sup> in the following order: (1) full brother, (2) mother, (3) father, (4) husband; (II) *Yautaka* devolves<sup>1550</sup> in the following order: (1) unmarried and unbetrothed daughters, (2) betrothed daughters, (3) married daughters, who have or are likely to have sons, (4) barren married daughters and childless widowed daughters taking together in equal shares, (5) sons, (6) daughter's sons, (7) sons' sons, (8) son's son's sons, (9) step-son, (10 and 11) stepson's son, stepson's grandson. Then if the marriage was in an approved form, *yautaka* passed in the absence of any of the above in order to husband, brother, mother and father. If the marriage of the woman was celebrated in an unapproved form then her stridhana passed in order to mother, father, brother, husband. (III) *Anvādheya* gifts<sup>1551</sup> (gifts or bequests) made subsequent to marriage by the father

1548. Vide *Tukaram v. Narayan* 36 Bom. 339 (F. B.), where there is an elaborate discussion about the following passages of the Mit. and the *Mayūkhya*. तद्वजःस्त्रीधने पितृवामि । माता च पिता च पितरौ सौ मन्वन्तीति पितृवामि । तद्वभावे तत्पत्न्यासञ्जानी धनग्रहणम् । मिता. on p. II. 145 ; भर्तृभावे तत्कुले तस्याः पत्न्यासञ्जो लभते । पित्रभावे च पितृकुले तस्याः पत्न्यासञ्जः । ... यत्तु मिताश्रयाणो भर्तृभावे तत्पत्न्यासञ्जानी सपिण्डानां पित्रभावे च तत्पत्न्यासञ्जानी सपिण्डानामिति तत्रापि तेनाश्रयाः पत्न्यासञ्जालपत्न्यासञ्जास्तद्वद्वारं तत्कुले. पत्न्यासञ्जा इति वाच्यदिवेनं व्याकृतवम् । यद. मन्वृष. p. 161.

1549. अतः (मुलकं) यधने सोदराणां तद्वभावे मातुर्मातुरभावे पितुः । एषां पुनरभावे तद्वत् भर्तुः । कात्यायन IV. 3. 29 p. 95

1550. ततश्च परिणयनतन्मन्वन्तीधने दुहितुर्वेत् न दुवाणां तत्रैव च क्रमार्थं दौतमन्वन्ती धीधने दुहितृणां ... हितानां च । मातापितृषु पितादेषु यत्तन्मन्वन्तीधने स्त्रियाः सत्तत्तत्तत् सुतायां यधने दुहितृणामेव तत्रापि यधने कन्यायास्तद्वभावे स्त्रियायास्तद्वभावे परिणीतायाः । सर्वदुहितृभावे च पुनरधिकाराः । अयमःस्त्रीधने भर्तुरधिकारात् । *Dāyabhāga* IV. 2. 22 and 23, pp. 85-86. It will be noticed that the D. B. distinguishes between un-betrothed, betrothed and married daughters. Vide Bannerjee's 'Marriage and Stridhana' pp. 477, 489-491 for order of inheritance to *Vaṇiaks*.

1551. यत्तुनः परिणयनानन्तरं पितृमातुर्भर्तृकुलान् स्त्रिया लभ्यं धनं तद् द्यावृणामिव । तद्वाश्रयाज्ञातव्यः । यत्तुद्वत्...यत्तुद्वत् ॥ (पा. २. 144)...अतः यधने सोदराणां तद्वभावे मातुर्मातुरभावे पितुः । एषां पुनरभावे तद्वत् भर्तुः । यथा कात्यायनः । यत्तुद्वत् तु यत्तुणामभावे भर्तुगामि तत् । *Dāyabhāga* IV. 3. 10 and 22. Vide *Prasanna v. Sarat* 36 Cal. 86 (son being held the preferential heir to a married daughter to stridhana given to a woman after marriage by her father), *Ram Gopal v. Narain* 33 Cal. 315 (mother held entitled to preference over the husband of a childless woman who died leaving property gifted to her by her father after marriage). In both these cases there is an elaborate examination of passages of the *Dāyabhāga* and it is shown how *Śrīkṛṣṇa* and even modern writers have created confusion by offering varying explanations.





brother's son, sister's son, husband's sister's son, brother's son, daughter's husband. Br. says that the mother's sister, maternal uncle's wife, paternal uncle's wife, father's sister, mother-in-law, elder brother's wife are declared to be like one's mother, that when these women have no *aunisi* child or a son of their co-wife or a daughter's son or a son's son or stepson's son, then the sister's son and the rest may take their wealth. This text, acc. to the *Dāyabhāga*, simply declares that a sister's son and the others may be heirs to the *stridhana* of the maternal aunt and the rest but the priority is determined among the six heirs mentioned above in *Bṛhaspati*'s text by the principle of religious benefit. Though the sister's son is the first in *Bṛhaspati*'s text, it is the husband's younger brother who stands really the first among the six if regard is had to the principle of religious benefit. The *Vit.* ( V. P. p. 554 ) states that in the absence of heirs up to the stepson and stepson's sons, the sister's son and the rest (mentioned in Br.) are the heirs to a woman's *stridhana* even when *sapinda*s like her father-in-law are alive, since mere *sapinda* relationship would not count when in conflict with a special text. It does not appear that the V. P. holds that the six take in the order stated in the text of Br.<sup>1551</sup> It rather states that among these six the choice of the preferential heir

( Continued from the last page )

नार्यवत् । द्वावमान IV. 3, 31, 35, 36-38 pp. 96-95. Vide also pp. 187-188. The verses of Br. occur in Sm. C. II. p. 287, V. Nir. p. 472, Par. M. III. p. 555, V. *Mayūkha* p. 161, V. P. pp. 553-554. The above verses of Br. mean that males who are a woman's sister's son or her husband's sister's son or her husband's brother's son or her own brother's son or her daughter's husband or her husband's younger brother are like her son and inherit her *stridhana* in certain circumstances.

1554. In *Bai Kesserbai v. Hanraj* L. R. 33 I. A. 176 the above text of *Bṛhaspati* was discussed in a Bombay case at great length ( pp. 190-197 ) and it was held that under the *Mayūkha* a co-widow was entitled to succeed to the *stridhana* of a widow in preference to her husband's brother or brother's son, that the text of Br. must be taken distributively, that is, when the marriage is in an approved form the husband's sister's son will succeed and that when the marriage is in an unapproved form the brother's son or sister's son will succeed, that the text does not indicate the order of succession which is governed by the principle of propinquity under the *Mit.* or the *Mayūkha*. It may be noted that the V. Nir. p. 472 expressly gives the distributive order. Acc. to the Sm. C. the six heirs referred to in the text of Br. take in the order stated therein. The *Dāyabhāga* does not hold this view.

would be determined by greater or less propinquity<sup>1555</sup>. On failure of these six the husband's sapindas, sakulyas and samānodakas take and then the father's kinsmen.

The question of an unchaste daughter's succession to stridhana would be decided in the same way as her succession to her father's property. Under the Dāyabhāga an unchaste daughter will not succeed. But under the Mitākṣarā as interpreted by modern courts an unchaste daughter who is a kept mistress or a prostitute may succeed but only after virgin daughters or married daughters as the case<sup>1556</sup> may be. The Mit. on Yaj. II 290 relies upon the Skandapurāṇa for the proposition that prostitutes are a fifth caste descended from certain *apsaras*.<sup>1557</sup>

It has been held by the courts that though prostitution entailed degradation according to ancient Hindu Law, it did not sever the tie of blood. So the stridhana of a *naukin* (a dancing girl) or of a married woman who becomes a prostitute may be inherited by her brother or sister or her husband or her husband's relations.<sup>1558</sup>

It may not be out of place here to suggest how stridhana should be dealt with when Hindu Law comes to be codified as it is likely to be in the near future. It may be urged that all distinctions on the ground of sex should be altogether done away with and whenever a woman succeeds to any property whether of a male or of a female she should take an absolute estate. But if this change is opposed by a large volume of opinion as it is quite possible, then it should at least be provided

1555. तदेवामभावे सत्त्वपि स्वधुरादिषु सविण्देवमन्यपतिरहितहचनचलाङ्गनिनी-  
दुयादीनामेव मातुल्यबादिवने प्रत्यासन्नितारतम्येनाधिकारः । स्वधादीनी तु दामाचारान-  
माश्रमास्तन् । नञ्चनविरोधे सविण्देवस्यासत्त्वोरप्योजकात् । य. य. p. 334.

1556. Vide *Tara v. Krishna* 31 Bom. 405 and *Govind v. Bhiku* 45 Bom. L. R. 699.

1557. स्मर्यते हि स्कन्दपुराणे पञ्चभूता नाम काश्चनाप्सरसरतसन्ततिर्विपाकवा-  
पञ्चमी जातिरिति । मिता, on धा. II. 290.

1558. *Hiralal v. Tripura* 40 Cal. 630, F. R. (holds that brother's son inherited the stridhana of a woman who had become a prostitute), *Narayan v. Laxman* 31 Bom. 784 (sister of a prostitute was held to be her heir), *Narain Das v. Tirlok* 29 All. 4 (husband held entitled to property acquired by a woman after she deserted him), *Subbaraya v. Ramasami* 23 Mad. 171 (stepson was held entitled to succeed to a woman's property though she had deserted her husband and led a life of unchastity).



that all property which a woman inherits from a female should be her absolute property. Then as regards inheritance to strīdhana one simple and straightforward rule should be laid down that the woman's sons and daughters should succeed together taking equal shares. A third suggestion would be that when there are no descendants of the woman herself, then the husband should be the next heir. When the strīdhana is that of a maiden, the heirs in order should be her brothers and sisters, then her mother, then her father and after the father the latter's nearest heir. It is not quite necessary at this stage to specify what further rules of devolution should be prescribed.

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## CHAPTER XXXI

### MAINTENANCE AND OTHER TOPICS

The subject of maintenance occupies an important place in modern Hindu Law. A brief statement of the law of the *smṛtis* and the *digests* on this subject must be made here.

The liability to provide maintenance for certain persons arises under the ancient Hindu Law in either of two ways viz. (1) on account of bare relationship between the parties or (2) on the ground of the possession of property. A verse<sup>1559</sup> quoted by Medhatithi on *Manu* III. 72 and IV. 251, by the *Mit.* on *Yāj.* I. 224 and II. 175 and occurring in some mss. of the *Manusmṛti* after XI. 10 provides, 'Manu declares that one must maintain one's aged parents, a virtuous wife and a minor son by doing even a hundred bad acts.' From this verse it follows that irrespective of the possession of property there is a personal legal obligation on the father to maintain his minor son, on the husband to maintain his wife and on the son to maintain his aged parents. *Baud. Dh. S.* (II. 3. 48) goes further and provides<sup>1560</sup> that a son is bound to maintain a mother even if she be *patita*. To the same effect are *Āp. Dh. S.* I. 10. 28. 9 and *Vas.* 13. 47.

1559. इदं च नातापित्रो साध्वी भार्या भुक्तः शिशुः । अन्धकाराश्रमं कृत्वा भर्तृणा मनुज-  
वीर्यं ॥ मेधा. on मनु IV. 251 quotes part of it as स्मृत्यन्तर, while the *mita*, on वा. II. 175  
ascribes it to Manu. This verse is cited in *Savitribai v. Jankaribai* 2 Bom. 573  
(F. B.) at p. 597 (which holds that a Hindu widow voluntarily living apart from  
her husband's relatives is not entitled to a money allowance as maintenance  
from them if they were separated from him at the time of his death and  
that she is not entitled to such maintenance from them whether they were  
separated or unseparated from him at the time of his death if they have no  
ancestral estate belonging to him in their hands). The texts of Manu,  
*Yāj.* I. 76 and *Nār.* are held on p. 398 of that report to impose a personal  
obligation enforceable by the State. Vide *Raja Ramu Ray v. Raja of  
Pittapur* 43 I. A. 148 at p. 154 where it is stated that the grandson is not  
included under the word 'son' and a grandfather is under no personal  
obligation to maintain a grandson if there is no ancestral property in  
his hands.

1560. पतितामोषं तु मातरं विधुषादन्निभापमाना । बौ. ध. सू. II. 2. 48 ; पतिता  
पिता परित्यागो माता तु पुत्रं न पतति । बनिष्ठ 13. 47 ; अयागवा माता तथा पिता सपिण्या  
हृण्यन्तेः सर्वे वायागवाः । परम्परेत्यामादपतितः स दण्डं प्राप्नुयाद्विहितं ज्ञातम् ;  
बह्विहितं q. by अयराजं p. 823 on वा. II. 237.



Mānu VIII. 389 prescribes that the man who abandons and does not maintain his parents, wife and son, when they are not *patita*, should be fined 600 *payas* by the king. Nār. also (S. B. E. 33 p. 184 verse 95) provides punishment for such a husband. Yāj. I. 76 states that if a man abandoned a wife who was obedient, diligent, the mother of a son and agreeable in speech he was to be made to give one third of his property to the wife and to maintain her, if he had no property. Viṣṇu Dh. S. V. 163 made the husband punishable like a thief if he abandoned his blameless wife. Kauṭ. II. 1 prescribes<sup>1561</sup> that if a man being able falls to maintain his child or wife, parents, minor brothers and sisters, unmarried daughters, widowed daughters, when these are not *patita*, should be fined twelve panna. These dicta have been followed even by modern courts in India. In *Sutbarayana v. Subbaku*<sup>1562</sup> it has been held that a son is bound to maintain his aged mother whether he has inherited property from his father or not.

The manager of a joint Hindu family is under a legal obligation to maintain all male members of the family, their wives and children. Nārada states<sup>1563</sup> that if any one among several (undivided) brothers dies without issue or becomes an ascetic the rest should take the estate and give maintenance to his wives till their death, provided they keep the bed of their husband unsullied but that they may cut off the maintenance if they (wives) behave otherwise. This is because the surviving brothers succeed to the estate in which the deceased had an interest during his lifetime. This is made quite clear<sup>1564</sup>

1561. अवलपदारं मातापितरौ ज्ञातृन्मातृव्यवहारान् भगिनीः कन्या विधवाद्याचिह्नतः कृत्स्नितो द्वादशवर्षो दुष्टोऽप्यत्र पतिर्नेमोऽप्यत्र मातुः । की. II. l. p. 48.

1562. 8 Mad. 236, referred to in *Surampalli v. Surampalli* 31 Mad. 338 at p. 342.

1563. This verse of Nār. is quoted in *Bhikubai v. Hariba* 49 Bom. 459, 463, 27 Bom. L. R. 13 at p. 16.

1564. तद्यच्च नारदः । याः पत्न्यो विधवाः साध्व्यो ज्येष्ठेन चक्षुरेव वा । सौमित्रेणापि वरिष्ठेन भर्तृव्याद्यादुनाहनेः । धनद्व्यह्निषेति सर्वत्र ज्येष्ठादौ शेषो द्रष्टव्यः । धनद्वह्निनिमित्तमाह भर्तृव्यः । अथ विधवायाः कात्यायनः । स्वपतिं स्वमित्रिणीं तु वासाद्यादुनभगिनी । अविमक्तपत्नीं तु धर्मोत्थामरणान्तिकम् । धनंशो वाक्ता धनेन वदतर्जिर्वरं धनसाधकं तु विरचनेमिच्छिह्नकर्म कार्म्यं त्रयादिकं सिध्यति त्रयद्वह्निमित्यर्थः । तु ज्येष्ठो वा ज्येष्ठार्थः । ... एतावद्वह्निमन्त्रादुक्तं शेषं वा शोभनीत्यर्थः । स्मृतिच. II. p. 292 and esp. n. p. 316. (The passage of नारद in Mr. Gharpure's edition is rather corrupt). The स्व. मयूख p. 139 quotes कात्यायन, this verse of Kātyāyana is quoted in *Lakshman v. Satyabhamabai* 2 Bom. 494 at p. 511.

in the Sm. C. explaining a verse of Nār. viz. 'widows that are virtuous must be maintained with food and raiment by the eldest brother (of the deceased) or by the father-in-law or by any other gotraja' on which it remarks: "The words 'by him who takes the estate' must be understood before all the words such as 'the eldest brother'". Kāt (922) states, 'when the husband goes to heaven the wife is entitled only to food and raiment if he was unseparated or she may get a share in (ancestral) property till her death'. The Sm. C. remarks that as maintenance depends upon taking wealth, Kāt provides two alternatives. In cases too numerous to cite this has been followed by all High Courts. Similarly an heir is bound to maintain out of the estate taken by him those persons whom the deceased was legally or morally bound to maintain. These persons who are excluded from inheritance or partition are entitled to maintenance and their virtuous wives and unmarried daughters also are entitled to be maintained (Yāj. II. 140-142. Manu IX. 202, Vas. 17, 54). The Baud. Dh. S. (II. 2. 43-46)<sup>1365</sup> provides that those who are past undertaking transactions (i. e. are very old) should be given food and raiment and also those who are blind, idiotic, impotent, immersed in vice and suffering from (incurable) diseases, and those that engage in prohibited acts, except the *patila* and his issue. Devala (quoted in the V. Mayūkha p. 165) has a similar passage, 'when the father is dead (or even when being alive he makes a partition) the impotent, the leper, the lunatic, the idiot, the blind, an outcast and his offspring, a person wearing a heretical sect mark—these are not entitled to a share of the heritage; to these except the *patila* food and raiment are to be given'. These persons suffer from a personal disqualification and maintenance is given to them in lieu of a share not because their status is denied but because they are incapable of management and enjoyment of property. Vide *Raja Ram Rao v. Raja of Pittapur*.<sup>1366</sup>

The general principle is that an heir is legally bound to provide out of the estate taken by him as heir maintenance for those persons, male or female, whom the late owner was morally or legally bound to maintain. For example, if there is no ancestral property the father-in-law who possesses only self-

<sup>1365</sup>. Vide note 1151 above for श्री. य. य. II. 2. 43-46. This and the text of Devala are quoted in *Murari v. Parvatibai* 1 Bom. 177 at p. 183.

<sup>1366</sup>. 451. A. 148 at p. 154.



acquired property is not legally bound to maintain his daughter-in-law (widow of a predeceased son); but on the death of the father-in-law, his heir i. e. son, widow, or daughter would be legally bound to maintain a widowed daughter-in-law.<sup>1566a</sup> The Bombay High Court, however, adds the condition that the predeceased son must have been in union with his father when he died; vide 23 Bom. 608.

By Act XVIII of 1937 it has been provided that in a family governed by the Mitākṣarā the widows of deceased coparceners such as the daughter-in-law and the grand-daughter-in-law are entitled to their husband's interest. The Act does not expressly state that their rights to maintenance are taken away. In many cases such widows may prefer to take a share instead of being allotted only maintenance and so far the law of maintenance will tend to become obsolete.

Another important question is what is the effect of unchastity on the right to maintenance? As regards the wife's right to maintenance and the effect of unchastity thereon during the husband's lifetime, vide H. of Dh. vol. II pp. 571-73 above. Manu XI. 176 says that a wife guilty of adultery should be confined by the husband in the same house and should be made to undergo the same penance as a man guilty of adultery has to undergo; Yāj. I. 70 also says that a wife guilty of adultery should be deprived of her status as a wife as to wealth and religious observances, should be given bare maintenance and should be confined to a part of the house. Unchastity on the part of a Hindu widow disentitles her to maintenance under certain circumstances. Vās. 21.10 provides that four classes of wives must be abandoned viz. one who yields herself to her husband's pupil or to his *guru* and especially one who attempts the life of her husband or who commits adultery with a man of a degraded caste and in 21. 12 Vasiṣṭha states that the wives of brāhmaṇas, kṣatriyas and vaiśyas, who commit adultery with a śūdra, may be purified by penance if no child is born (of the adulterous intercourse) but not otherwise'. It is provided by Yāj. I. 72 that if a woman (of the three higher castes) conceives through adultery with a śūdra or kills her foetus or attempts the death of her husband or is guilty of grave sins (such as brāhmaṇa-murder) she shall be abandoned.

<sup>1566a.</sup> Vide *Rajani Kanta v. Sajani Sundari* 51 I. A. 29; *Yamunabai v. Nanubai* 23 B. m. 608.

Manu IX. 188 provides that when women become *patita*, the rite called *ghatasphota* (the procedure of which may be seen at p. 388 of the H. of Dh. vol. II and in note 1168 in the Appendix to this volume) may be performed, but they must be given food and raiment and they must be provided with a hut near the family house. Yaj. III. 296 has a similar provision. The result is that there is no text which provides that a widow who is once unchaste must be deemed unchaste for ever and must for ever forfeit her claim even to a starving maintenance even if she repents, reforms her ways and gives up an immoral life. On the contrary the texts say that widows guilty of adultery are purified by penance and may be restored to all their social privileges. For example, Manu<sup>1567</sup> XI. 189 says generally about all persons that after they perform the appropriate *pratyakulta*, they should not be rebuked or avoided (but should be restored to all social intercourse). The Mit. on Yaj. I. 72 expressly says that the abandonment of even such women as are referred to in that verse consists in not associating with them conjugally and in religious matters, but does not mean that they are to be driven out of the house.<sup>1568</sup>

On Yaj. III. 297 (which states that in the case of women there are three peculiarly grave sins viz. adultery with a low-caste man, killing the foetus and attempt to murder the husband) the Mit. sums up the whole position as follows: (1) total abandonment of women for the four grave sins laid down in Vas. 21. 10 takes place when they do not perform penance; (2) women guilty of adultery not of the aggravated kind mentioned in Vas. 21. 10 are to be given starving maintenance that would keep body and soul together and are to be lodged in a hut near the house and to be afforded protection (Yaj. I. 70 and III. 296), even if they do not perform the requisite penance. But the Mit. is silent as to the claim to maintenance of widows that at first led a life of incontinence (but not of the aggravated kind) and subsequently reformed their ways. But from Manu XI. 189 it may be inferred that widows not guilty of

1567. एनस्त्रिभिर्निर्भिकैर्नामि किञ्चित्सहाचरेत् । कृतनिर्णयनांश्चैव न उदुप्सेत कर्हि-  
चित् । मनु XI. 189 = विष्णुधनंशुच 54 31. अपराकं p. 98 says on वा. I. 70, कृतमाप-  
यित्वा तु संश्रमहार्यं भवति-कृतनिर्णयं ... कर्हिचित्-इति मनुवचनात् ।

1568. एवायच्छीपभोगधर्मेकार्येणैव तु निष्कासनं युगाचरणा । निरुन्मपादेकवेदमनि-  
हति नियमात् । मिता. on वा. I. 72, निरुन्मपादेकवेदमनि is मनु XI. 176 This  
passage of the Mit. is quoted in *Bhikubal v. Harida* 27 Bom. L. R. 13  
at p. 20 (= 49 Bom. 459 at p. 467).



aggravated adultery that have undergone the proper *prāyaścitta* and that return to decent life would have been entitled to ordinary maintenance from the period they turned over a new leaf.<sup>1569</sup>

A brief reference to the modern case law on this point may be made here. In *Bhikubai v. Hariba*<sup>1570</sup> Sir Lallubhai Shah (after an elaborate examination of ancient and medieval authorities and decided cases) held that a widow who had been unchaste, but who is proved to have given up the life of unchastity is entitled to bare maintenance. In *Lakshmichand v. Anandi* the Privy Council make the general observation.<sup>1571</sup> 'It is true that the right of a Hindu widow to maintenance is conditional upon her leading a life of chastity and that she loses that right if she becomes unchaste'. In *Kisanji v. Lakshmi*<sup>1572</sup> it was held that subsequent unchastity disentitled a widow from recovering maintenance, even though it is claimable under an agreement made with the deceased husband's father and brother. In *Musammal Ganga v. Ghasita* 1 All. 46 (F. B.) it has been held that unchastity does not incapacitate a daughter from inheriting stridhana. In *Angammal v. Venkata* 26 Mad. 509 the same rule was laid down.

The illegitimate son born of a śūdra concubine to a man of the three higher castes appears to have been held entitled to maintenance from very early times. Gaut. 28, 37 provides, 'the son from a śūdra woman of a man (of the three higher varṇas) who is without issue receives maintenance (lit. source of maintenance), if he is obedient, in the same way as a pupil might receive'. And Gautama (28, 43) extends the same rule to the offspring of *pratilonka* unions. Vide p. 601 above and note 1135 for the text of Gaut. and Bṛ. on the point. Manu IX.

1569. Vide *Sathyabhama v. Kesavaacharya* 39 Mad. 658 at p. 660 where it is said, 'But in none of these texts is there any provision for a woman who has repented and was subsequently leading an honest life. It is not to be presumed from the omission to provide for such a contingency that the resumption once made is to be irrevocable and that the fallen woman who had reformed is to be denied even a starving allowance'. Vide also *Bhikubai v. Hariba* 27 Bom. L. R. 13 at pp. 23 and 26 and *Rambhutar v. Bhagavanta* 56 All. 392, 394.

1570. 27 Bom. L. R. 13 = 49 Bom. 439.

1571. 62 L. A. 250 at p. 255.

1572. 33 Bom. L. R. 310. But this case seems to be in conflict with the decision in *Shivaji v. Bai Santhi* 33 Bom. L. R. 490.

155 also provides that the son of a man of the three higher castes from a śūdra woman (not married to him) is not entitled to share in the ancestral estate. Br. (S.B.E. 33 p. 374 v. 31) states<sup>1573</sup> that an obedient and meritorious son born from a woman of the śūdra caste to a man who has no other child should get maintenance and that the sapindas should divide the rest of the wealth of the deceased. Both the Mīt. and the V. Mayūkha, while explaining Yāj. II. 133-134 about the rights of the illegitimate son of a śūdra from a śūdra woman, remark that one who is begotten on a *dāsi*<sup>1574</sup> by a member of the regenerate classes is not entitled to a share even at the father's choice nor to a half share after his father's death but that he is only entitled to maintenance.<sup>1575</sup>

There is a good deal of case law on this subject, but much of it is irrelevant in this treatise. The right of maintenance attaches in the first instance to the separate property of the putative father and if the latter leaves no such property but was a member of a joint family it attaches to the property of the joint family of which the putative father was a member.<sup>1576</sup> It has further been held that it does not matter if the woman was not a *dāsi* (a slave) or a permanent concubine in the exclusive keeping of a man or that the intercourse was adulterous.<sup>1577</sup> It has been also held that the illegitimate son's right to maintenance is a personal right and cannot be transmitted to his son<sup>1578</sup> and that maintenance has to be provided for him till his death<sup>1579</sup> (and not merely up to his attaining majority).

1573. अनपत्यस्य ... समवाप्नुवुः ॥ इह, cited above in a. 1133 and q. 1134 above in n. 1133. This verse of Br. is cited and translated in *Krishnayyan v. Muttusami* 7 Mad. 407 at p. 412 and in *Rojani Nath v. Nitai* 48 Cal. 643 (P. B.) at p. 686.

1574. For the meaning of *dāsi* vide above p. 602 n. 1137.

1575. अत्र च दूतस्यमाद ... किं स्वतन्त्रस्य जीवनाय समते । मित्र. on q. 11. 133-134 q. above in n. 1136. Vide च. सद्गुह p. 104 and च. २, p. 488 for almost the same words. The word जीवनाय does not mean 'bare maintenance' or 'bare necessities of life,' has no reference to the amount of maintenance but is used to distinguish it from *amla* (share). Vide *Hiralal v. Meghraj* 1 L. R. (1938) Bom. 779 at pp. 787 and 794.

1576. *Ananthaya v. Vishnu* 17 Mad. 160; *Subramania v. Valu* 34 Mad. 68; *Vellaiyappa v. Natarajan* 58 I. A. 402, *Hiralal v. Meghraj* 1 L. R. (1938) Bom. 779 = 40 Bom. L. R. 933.

1577. Vide *Ruki v. Govind* 1 Bom. 97.

1578. *Roshan Singh v. Balwant Singh* 27 I. A. 51 = 23 All. 191.

1579. *Hargobind v. Dharam Singh* 6 All. 329, *Kuppa v. Singaravelu* 8 Mad. 325, *Hiralal v. Meghraj* 1 L. R. (1938) Bom. 779.





Kaut. also similarly prescribes (III.<sup>1387</sup> 5. p. 161), 'the king takes heirless-property except that of *īrotṛigya*, setting apart (wealth) for the maintenance of women (of the deceased), for funeral rites and for poor or wretched (dependents of the deceased)'. The Mit., the V, Mayākha, the Par. M. and others state that the verses of Nār. and Kāt. refer to *anuruddha-śrī* alone, since the word *pūṣi* (duly wedded wife) does not occur therein, but only the words '*yogī*' and '*śrī*'.<sup>1388</sup> There has been a great divergence of views in the decided cases about the significance of *anuruddha śrī*. It is generally rendered as a concubine or mistress in the exclusive keeping of a person till the latter's death'. Several conditions are necessary to constitute a woman an *anuruddha śrī* capable of claiming maintenance from the estate of her deceased paramour in the hands of his sons or other heirs. In the first place, she must have been continuously and exclusively in his keeping till his death. How long she should have been thus in his keeping cannot be fixed by any hard and fast rules. She must have been so long in his keeping continuously till his death that it can be said that the connection had become permanent. In *Bai Nagubai v. Bai Monghubai* a period of five years was deemed to be sufficient. In the second place the concubine<sup>1389</sup> must observe sexual fidelity to her deceased paramour after his death in order to be able to claim maintenance from the estate in the hands of his heirs or successors. In *Bai Monghubai v. Bai Nagubai*<sup>1390</sup> a third condition was laid down viz. that the connection of the concubine with the deceased paramour should be perfectly open and recognized and she must have been kept practically as a member of the family. But in *Bai Nagubai v. Bai Monghubai*<sup>1391</sup> the Privy Council overruled the above decision and held that in order to entitle a mistress to maintenance it is not necessary that she should have resided in the same

1387. अद्विषादुक्ते राजा इरेच्छीदृष्टि-केत-कद्वयवर्जमन्त्रक ओत्रिषद्वयम् । तत् वैविधेयं पचयेत् । की. III. 5 p. 161; Dr. Sham Shastri's translation (p. 203) 'property for which no claimant is found shall go to the king, except the property of a woman, of a dead man for whom no funeral rites have been performed or of a niggardly man' is clearly inaccurate and hardly in consonance with the actual words of the text.

1388. वदन्ति कायापयमेनेके-अद्यापिर्क ..... पदित-इति ..... तद्वत्पचदृष्टीविषयं वैविध्यवत् । नारदवचनं च अन्यत् ..... स्मृतः-इत्यपचदृष्टीविषयमेव । श्रीशङ्कराचार्य । मिता. ७७ पा. II. 114.

1389. *Yashwantrao v. Kashibai* 11 Bom. 26 at p. 25.

1390. 24 Bom. L. R. 1002 = 47 Bom. 401.

1391. 53 I. A. 153 = 30 Bom. 604 = 38 Bom. L. R. 1143.



house with the deceased together with his wife and the ordinary members of his family. And in *Jayavati v. Kesari*<sup>1592</sup> it was further held that the concubine need not prove that she was recognized by the family of the deceased or that his relationship with her was known to the family. A further restriction was imposed by the case of *Anandilal v. Chandrasek*<sup>1593</sup> that the intercourse with the paramour should not have been adulterous. But this case has been overruled by a recent Full Bench decision in *Akku v. Ganesh*<sup>1594</sup> which holds that a permanently kept concubine is entitled to be maintained out of the estate of her deceased paramour, although she has a husband living (who was examined in the case as a witness), provided she observes sexual fidelity to the deceased paramour after his death. It becomes, therefore, necessary to examine the Sanskrit medieval commentaries and digests in order to arrive at a correct interpretation of the expression '*avaruddha stri*'. Strangely enough, the Mit. does not define the word in the section on *dāyabhāga*, but only under '*stri-sangrahana*'. Yāj. II. 290 provides, 'a man should be awarded a fine of fifty *paṇas*, if he has intercourse with *dāsīs* that are *avaruddhā* or that are *bhujisyā* and also (other women such as prostitutes and *sairipis*), even though ordinarily they (i.e. *dāsīs* and others) are approachable (without incurring the consequence of punishment)'. The Mit. explains that the word '*ca*' placed after '*bhujisyāsu*' in Yāj. II. 290 is meant to include *veśyās* and *sairipis* along with *bhujisyās*. Acc. to the Mit. the verse prescribes the same fine for intercourse with three kinds of women, viz. *dāsīs* that are *avaruddhā*, *dāsīs* that are *bhujisyā* and other women such as *veśyās* (who are ordinarily approachable by all males of their own or higher castes) and *sairipis* (who abandon their husbands and resort at their desire to some other male of their own caste, as defined by Yāj. I. 67). A woman though originally a *veśyā* or a *sairipi* may be known to be kept by a man. In that case if another man approaches her, Yāj. II. 290 declares that he would be liable to be fined in the same amount as if he approached an *avaruddhā dāsī* or *bhujisyā*, because being in the keeping of another at the time she would be like a wife (as the other two classes do) so far as punishment for approaching a kept woman is concerned. This verse is not concerned with the maintenance

1592. 36 Bom. L. R. 61.

1593. 48 Bom. 203 = 26 Bom. L. R. 63.

1594. 47 Bom. L. R. 5 (F. B.).

of women at all. The Mit. here defines 'avaruddhā dāsi' as "a slave woman who is prohibited by her master from intercourse with other men with an order to stay in the master's house alone in order that there may be no loss of attendance (on the master)." The Mit. defines a *bhujisyā dāsi* as 'one who is restricted (as to enjoyment) to certain definite males' (*parusamīkṣā-parigrahā bhujisyā*).<sup>1595</sup> It is worthy of note that the Mit. employs different phraseology in defining the two words. In defining a *bhujisyā* it employs the word '*niyata*', which generally means 'fixed or definite', while in defining 'avaruddhā' it employs the word '*niruddhā*' meaning 'prevented or prohibited'. If the two words were intended to convey the same meaning, there is no reason why the Mit. should not have employed the same word (*niruddhā*) in defining a *bhujisyā*. The difference between an *avaruddhā dāsi* and a *bhujisyā* is that the former is ordered to stay in the master's house, while the *bhujisyā* is not so ordered and secondly the *avaruddhā* is forbidden to have sexual intercourse with any one except the master, while the *bhujisyā* is not so forbidden, but she is to restrict herself to enjoyment by certain specified males (friends or men of the master's family) and not necessarily by the master alone. This is the meaning assigned to those words by Mitraniśra in his commentary<sup>1596</sup> (not his digest) on Yāj. II. 290. The Mit. itself indicates the meaning of '*niyata*' by saying elsewhere that ownership springs from certain fixed sources (*niyatopāyakaṁ swatvam* on Yāj. II. 114). It is respectfully submitted that the Privy Council gave a wrong interpretation of the word 'avaruddhā' in *Bai Nagubai v. Bai Monghubai*<sup>1597</sup>. Though slavery is now abolished in India there is no reason why the two characteristics of *avaruddhā* (viz. staying in the master's house and being

1595. Vide note 1134 for Yāj. II. 290. उक्तदशना वर्णक्षयो दास्यता एव स्वामिना कृत्वाप्राप्तमित्युदाहार्यं एव एव स्वतन्त्रमित्येवं दुस्वान्तरोपभोगतो निवद्धा अव-  
बद्धा । दुस्वमित्यतपरिवृद्धा मुक्तिव्या । यद्वा दास्योऽवबद्धा मुक्तिव्या वा अवयुस्तदा सासु । तथा  
अवबद्धा वैश्यास्वैरिणीनामपि साधारणवर्णिना मुक्तिव्यानां च ग्रहणम् । मित्र. on Yāj.  
II. 290.

1596. स्त्रीणां क्षीनितुकमपवादति । अवबद्धास्मिन्पादि । दासी दुस्वमित्येवेन विनाश्या  
परिवृष्टिता च धिषिषा । एकेन दुस्वेन स्वभोगार्थं दुस्वान्तरोपभोगतो निवद्धा, मुक्तिव्या वैश्या  
चेति । मुक्तिव्या च स्वमित्यदुस्वान्तरोपभोगादिवयः स्वपरिचर्याकारिणी । ... एवं च  
सकामाया वैश्याया एकेन कृत्वाभिर्वाभिगमे दुष्वाभावः । अवबद्धामुक्तिव्योरेपि निवतदुस्ववश-  
भिगमे दुष्वाभावः, सम्पात्तिरभिधानादिति मित्राक्षराखरसः । मित्रनिबन्ध in comp. on Yāj.  
II. 290.

1597. 53 I. A. 133 = 50 Bom. 604.



exclusively kept by the master) stated by the Mit. should not have been strictly adhered to by the Privy Council, particularly when they were holding heirs liable for the maintenance of kept mistresses, which is hardly ever allowed in any other system of law. With the greatest respect to the Full Bench, it must be said they went wrong in holding that *bhujisā* means 'a mistress who is restrained from intercourse with other persons (other than the master)' and in holding that the only distinction between an *avaruddhā* and a *bhujisā* is that the former is required to stay in the house of the paramour, while the latter is not (47 Bom. L. R. at pp. 13 and 22). The learned judges have not correctly interpreted the word 'niyata' and also the explanation of '*bhujisā*' given by the *Bālabhāṭṭi*<sup>1598</sup>. The meaning of the *Bālabhāṭṭi* was misunderstood on account of the wrong meaning attached to the word 'niyata'. What the *Bālabhāṭṭi* means in explaining the definition of *bhujisā* is 'one who is to be enjoyed by certain definite males only other than the master' (i. e. by the master and also certain defined males) and it does not mean 'who is forbidden to be enjoyed by males other than the master'.

The F. B. further rely upon a passage of the Mit. in support of their conclusion (47 Bom. L. R. at pp. 14 and 22). On the question of what properties are impartible, the Mit. on Yaj. II. 119 quotes Manu IX. 319 viz. 'clothes, conveyances, ornaments, cooked food, water (wells &c.), women, *popakṣema* and pastures (or ways)—these they declare are impartible.' The Mit. explanation<sup>1599</sup> of the word '*striyaḥ*' may be translated as follows: '*striyaḥ*' here means 'female slaves; if they are uneven in number they should not be divided by taking their price into consideration, but they are to be made to work in turns (for the separated members of the family), but as regards women kept by the father such as *svairinis* and the rest, they are not to be divided by the sons even though they be even in number'. It is difficult to see how this passage supports the Full Bench decision. That

1598. दुरुचान्तेति । स्वभोग्या तु नैवेति भावः । दुरुपेति स्वविभिन्नेत्यर्थः । बालभट्टो ७७ वा, II. 290.

1599. स्त्रियश्च दास्यो विधवा न मूलद्वारेण विभाज्याः पयोपेण कर्म कारयितव्याः । अवरुद्धास्तु पित्रा स्वैरिषाया समा जपि पुत्रैर्न विभाज्याः । स्त्रीषु च संयुक्तास्त्रिविधाः—इति गौतमस्मृत्याम् । मित्रा, ७७ वा, II. 119; the सुबोधिनी remarks, 'विद्वद्वद्वैरिषादीनां समानामप्यभिभाज्यते औजस्यचने दुर्ययति स्त्रीषु च संयुक्तास्त्रिविधाः । संयुक्तास्तु उपयुक्तास्तु अवयुक्तास्त्रिविधाः ।' अस्मिता दूरे दद्याः दुरुपेताकारिणि—इति नेमकोक्तम् । एते च दद्यामिदं दूरे अवयुगमिदं दद्यामिदं संयुक्तम् । स्मृतिच. II. p. 321.

passage can be explained in two or three different ways. In the first place, the Mit. having itself clearly distinguished and defined three classes, viz. *avaruddhā*, *bhujīyā* and *svairīnī* (together with *veśyā* also) it cannot be lightly supposed that elsewhere it gives up that distinction. Therefore it would be difficult to say that here (on Yaj. II. 119) the Mit. means that *svairīnī* are also the same as *avaruddhā*. Hence the interpretation should be that women who are *avaruddhā* (kept exclusively by the father) and even other women also like *svairīnī* (who had sexual connection with the father though not as *avaruddhā*) should not be divided i. e. a 'ca' should be understood after '*svairīnyādyāḥ*'. Or it is possible to hold that the word '*avaruddhā*' in that passage is not employed in the strict technical sense (as defined by the Mit. on Yaj. II. 290), but in its etymological sense meaning 'women who are *svairīnī* and the like that are taken into his harem (or under his protection) by the father should not be divided'. This interpretation derives support from the explanation offered by the *Subodhini* (which is repeated almost verbatim by the *Bālabhāṭṭi*) about the text of *Gautama* quoted by the Mit. that '*samyukta*' in *Gaut.* means 'enjoyed' or 'confined' (in the house). This shows that the words '*ruddhā*' and '*avaruddhā*' were used in the etymological sense by distinguished writers. The *Sm. C.* II. p. 321 while explaining the word '*ruddhā*' in *Manu* IX. 12 applied to a wife guilty of adultery explains it as meaning 'confined in a part of the house' (grhe *avaruddhām*). When the Mit. states (p. 811) that the verses of *Nar.* and *Kat.* refer to *avaruddhā* *stri* it follows that these verses do not refer to *bhujīyā*, who would therefore be deemed not entitled to maintenance at all.

There is a large body of caselaw about the right of a widow in a joint Hindu family to reside in the family house, about the right of a daughter-in-law against her deceased husband's father who has no ancestral property in his hands and against the heirs of the father-in-law, about the amount of maintenance to be allowed to a widow and about the rate at which arrears of maintenance are to be allowed, about the period for which arrears may be awarded, about making the maintenance a charge on the estate in the hands of the heirs, about varying the rate of maintenance fixed by a decree or an agreement &c. These are not quite germane to the present volume, particularly because most of the decisions on these



matters are not based on the words of the smrtis or of the medieval digests, but are based on logic and principles of justice and equity. But there is one matter which deserves a passing reference. Ancient Hindu Law attached the highest spiritual importance to the payment of debts (vide pp. 414-417 above). Therefore debts contracted by a Hindu are held by the Courts to take precedence over the right of maintenance of a man's wife, his infant child or his widow after his death.<sup>1600</sup> Similarly debts contracted by the manager of the joint family of which the widow's husband was a member would take precedence over the widow's right of maintenance, provided the debts were for the benefit of the family or were for legal necessity.

The last *vyavahārapada* is *prakīrṇaka*, which is defined by Viṣṇu Dh. S. 42. 1 as 'miscellaneous' (*yadanuktam tat prakīrṇakam*) or by Nar. as matters that were to be set in motion by the king himself (vide note 331). These have been dealt with above and do not require any further treatment here.

At the end of this section on Vyavahāra it would not be out of place to say a few words about wills. Owing to the joint family system and the custom of adoption testamentary dispositions did not come into vogue in ancient India. Among the many kinds of documents (*lekhyā*) mentioned by Kaut., Br., Kat. and others cited above there is no term for a document which can convey the idea of a modern will. But it need not be supposed that the idea had not at all dawned upon the minds of people before the advent of the British.<sup>1601</sup> Wills were known among Mahomedans and contact with them would naturally suggest the idea of a will. Oral or written instructions by a man expecting death to his heirs intended to affect the disposal of his property must have been given occasionally and should not

1600. Vide *Lakshman v. Satyabhamabai* 2 Bom. 494 at pp. 499, 505; *Radhakut v. Gopal* 45 Bom. L. R. 980 at p. 991.

1601. In *Nagulutchmees Ummal v. Gopoo Nadaraja* 6 Moo. I. A. p. 309 the P. C. said (at p. 344): 'It must be allowed that in the ancient Hindu Law, as it was understood through the whole of Hindustan, testamentary instruments in the sense affixed by English lawyers to that expression were unknown; and it is stated by a writer of authority (Sir Thomas Strange) that the Hindoo language has no terms to express what we mean by a will. But it does not necessarily follow that what in effect though not in form are testamentary instruments which are only to come into operation and affect property after the death of the maker of the instrument were equally unknown.

be supposed to have been entirely unknown. Verses 341-359 of the *Rājataranginī* IV. appear to embody the political testament of king Lalitāditya of Kashmir in the first half of the 8th century. Kat. (566) makes a very near approach to the modern conception of a will<sup>1602</sup>. He says, 'if a gift was promised by a man for a religious purpose whether when in good health or when afflicted with disease, the son should be made to pay it, if the father dies without giving it over.' Here the mere declaration of the intention of a person was made enforceable after his death against the son or other heir. Bṛhaspati's verse saying that a promise or direction to take effect after the death of the promisor was not ordinarily enforceable has already been quoted above (n. 823). In the quarterly of the *Bhārata-Itihāsa-saṁśodhaka Maṇḍala* of Poona, vol. XX p. 210 (for May 1940) there is a letter (dated 1775 A. D.) written by one Naro Babaji, who, after referring to his illness, provides on a generous scale for his funeral and śrāddha expenses and makes dispositions in favour of his daughter-in-law, of another widow, and for the marriage of his kinsman's sons and distribution of the balance of his assets<sup>1603</sup>.

1602. श्वशुरेमाहेन वा देवं अविमं धर्मकारणात् । अदृष्टा तु घृते दाप्यस्तासुतो नात्र संशयः । कात्या. १. ४. by अपराकं p. 782, वि. चि. p. 16, अ. मधुसू. p. 206. 'अविमिना यदि दानमदृष्टेन घृतमदा तदापादैरुद्वेपम् । अवयच्छस्तो राज्ञा दाप्याः । एतच्च धर्मो नित्यवशे सति दृश्यम् । अपराकं p. 782.

1603. पाद्री शिरेजीव राजकी मायवराव पति नारी बाबाजी अभिराव उदरि सव ११८९ मंगळनान संवाते आपले शरीर आज महिनाभर पेसा झाली आहे म जाने शरीरान्हा भरवसा नाही आपला धर्माचा ऐवज अन्वकाळ वरीरे देवला आहो ती वेधेवमाणे :

धर्म करावा नीहपणीत

१००० आपण कितीत असता आपले हाते आयधीत व शिरपडारा सोडात वरीरे प्रसंग आहवास करणजे

१००० क्रियेस लावजे

१००० मासिक वर्षमादू मिलोन

× ×

११००० आपले मयाजर्म व कासीत एक मागीचीदुराचरण व किरकोल धने

१००० यामिवाव किरकोळ धने कासीस अपना आप्य शेकी

× ×

१००००

(Continued on the next page)



One of the earliest wills to come before the British Indian Courts was that of the notorious Umichand<sup>1604</sup> (who died in 1758 A. D.). Bengal Regulation XI of 1793 recognized by section VI the power of a Hindu proprietor to make a will or declaration giving, prior or subsequent to 1st July 1794, his entire landed estate to his eldest son or next heir or other son or heir or to any person or persons. In a Bombay case the will of a Hindu made in 1789 is referred to<sup>1605</sup>. A Pundit of the Recorder's court of Bombay gave it as his opinion in 1812 A.D., 'there is no mention of wills in our *Shāster*; therefore they ought not to be made' (vide Strange's Hindu Law, vol. II p. 449). In L. L. R. (1940) 1 Cal. 415 at p. 424 the Privy Council observe that the Hindu will in its present form is a development since the middle of the 18th century.

It is beyond the scope of this work to dilate on the modern Acts dealing with Testamentary dispositions such as the Indian Succession Act (Act 39 of 1925).

Now that the foregoing lengthy presentation of the ancient and medieval Hindu judicial procedure and substantive law has been brought to a close a few general observations may be indulged in here. The Hindu Law of pleading and evidence compares favourably with similar laws of many other countries and has extorted the admiration and encomiums of such

(Continued from the last page)

× ×

वसिष्ठाच कालमे

१६०० बाबाबाई दून विजवाशी वला अजमासे बाबा सहा तुम्हाराक्या आहत वसिष्ठाच काळीस गेली आधवा आपले बापाचे घरी राहिली तर तीन रुपये घाले

१६०१ तीर्थस्वामी दादाचे कियेस लावावे

१६०२ बाबाबाई रत्नबाबाईस तर्वास पत्रांकितो १२ रुपये देतच आता पुढे तुम्हापासोन जाईल तेव्हा तीन घाले

१६०३ तुम्ही आपले तीर्थी सुलाचे लग्नास खर्च कराव

१६०४ सद्वृत्तमाने करार

सद्वृत्त रुपये जाऊन बाकी राहिल त्यांत तुम्ही पिंडोबाचे ५ रुप्याचे बापाकांचे आग्रवावासी देऊन घालवावे पुढे तो थोर झाल्यावर कोणी त्यास वीर देहंत आणितो तुम्हापासून वेगळा मित्रो लागला तर बाकी मित्रे त्यास घाले ५ तुम्ही मित्रे त्यावे. × × ×  
The text gives a history of the family and how the testator earned his fortune.

1604. The will is set out in an English translation in W. A. Morrison's 'The Hindu Will in Bengal' (Calcutta, 1870) pp. 9ff.

1605. Vide *Jugmohandas v. Sir Mangaldas* 10 Bom. 328.

eminent Jurists and Judges as Sir William Jones, Sir Thomas Strange and others. For example, Sir Thomas Strange in 'Hindu Law' (1830) vol. I observes (at p. 311), "sufficient be it to observe that Hindu pleading was noticed with commendation by Sir William Jones and that, with some trifling exceptions, the Hindu doctrine of evidence is, for the most part, distinguished nearly as much as our own, by the excellent sense that determines the competency and designates the choice of witnesses with the manner of examining and the credit to be given them; as well as by the solemn earnestness with which the obligation of truth is urged and inculcated; inasmuch that less cannot be said of this part of their law than that it will be read by every English lawyer with a mixture of admiration and delight, as it may be studied by him to advantage. Even the *pious perjury* which it has been supposed to sanction<sup>1605a</sup> being resolvable after all into no greater liberty than what our juries (not indeed with perfect approbation) have long been allowed to take, where the life of a prisoner on trial before them is at stake; credit is to be given to the pregnant brevity of the Hindu oath viz. 'what you know...declare at large and with truth' (Manu VIII. 80); as also to the noble warning, with which the subject as detailed by Manu is ushered in, that 'either the court must not be entered by judges, parties and witnesses or law and truth must be openly declared' (Manu VIII. 13)." The medieval digests made a very near approach to the modern ideal of equality of all men before the law. How even in the 20th century the much vaunted equality before the law of all people in England is far from being achieved and how it often proves quite illusory where the poor or the labouring classes are concerned is well brought out in a book entitled 'Justice in England' by a Barrister published by Victor Gollancz in 1938, especially in chapters I and VI. The Hindu jurists evolved tolerably clear and sound ideas about contracts, debts, deposits and pledges, sales, mortgages and gifts of immovable properties, developed a system of joint family rights and liabilities and laid down a peculiar law of inheritance and succession to males and females. The Hindu system of inheritance and succession

1605a. This is a reference to the texts of Gaut. 33.29, the Mahābhārata, Manu, Yājñavalkya and others cited on p. 353 above. Sir William Jones remarks (in Works, vol. VIII p. 443, ed. of 1807): 'In the great system of contracts and the common intercourse between man and man, the *Pooras* (*Pothis*) of the Indians and the Digest of the Romans are by no means dissimilar'.



pursues a middle course. It does not distribute the estate of a deceased person simultaneously among several heirs as under the Mahomedan Law (where the widow, the father, mother, sons and daughters of a man take the estate together if they are all alive at the time). Nor did the Hindu system confine the descent to a single person among a group of heirs of the same degree and sex as in the English system before 1826 (where the eldest son succeeded to the real estate of an intestate person).

It has further been seen how the ancient and medieval Hindu rules as to debts, adoption, partition and inheritance have been moulded for over a century by Legislation and by decisions of the Privy Council and the Courts in India. Many persons feel that the time has now arrived for the codification of Hindu Law. A Committee presided over by Sir B. N. Rau has prepared a draft code which attempts to codify certain branches of Hindu Law. From several quarters there has been vehement opposition to this draft code. The objections raised are many. It is not possible to deal here with the several objections in detail. But some of them which raise questions of fundamental importance will have to be briefly stated and answered. The first objection is that in view of Queen Victoria's proclamation of 1858 the Indian Legislature should not interfere with the customs and usages of the people that are part and parcel of the Hindu religious system. But this objection is hollow and unsubstantial and conveniently ignores what has happened during the last hundred years or so. All that the Queen proclaimed was: 'Firmly relying ourselves on the truth of Christianity and acknowledging with gratitude the solace of religion we disclaim alike the right and the desire to impose our convictions on any of our subjects. We desire it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.' Notwithstanding the noble sentiments expressed here, the Indian Legislature both before and after the proclamation passed numerous laws that more or less impinged upon or affected the religious theories, sentiments and practices of millions of Hindus! The following is a list of some of the important laws of this character which will convince any one of the fact that

people have always submitted to laws passed by the Governor-General or the Legislature that prevented them from carrying out their cherished ideas and practices: Regulation XVII of 1829 which declared the practice of *Sati* illegal and a crime punishable by the courts; the Caste Disabilities Removal Act (XXI of 1850); Hindu Widows' Remarriage Act (XV of 1856, which legalises the marriages of Hindu widows notwithstanding any custom or interpretation of the Hindu Law to the contrary); the Indian Penal Code (XLV of 1860, which makes sexual intercourse by a man with his own wife that is under thirteen years of age punishable as rape); the Child Marriage Restraint Act (XIX of 1929), which makes the marriage of a male below 18 and of a female below 14 punishable as a crime; the Hindu Inheritance (Removal of Disabilities) Act (XII of 1928) which sets aside the *Mitākṣarā* rules about exclusion from partition and inheritance except in the case of those that have been lunatics or idiots from birth; the Hindu Law of Inheritance Amendment Act (II of 1929, which enables the son's daughter, daughter's daughter, sister and sister's son to succeed under the *Mitākṣarā* in that order after the paternal grandfather and before a father's brother); the Hindu Gains of Learning Act (XXX of 1930); the Hindu Women's Rights to Property Act (XVIII of 1937, which enables the widow of a deceased member of a joint Hindu family to succeed to the interest of her husband in the joint family property and to succeed to her deceased husband's separate property for the same share as that of a son). The Privy Council claimed more than 70 years ago that 'the British Government by virtue of its sovereign power asserted, as the former rulers of the country had done, the right to visit endowments of this kind (*viz.* temples) and to prevent and redress abuses in their management' (*Rajah Mutu Ramalinga v. Periamayagum* 4 I. A. 209 at p. 232). Non-Hindu Judges of the Privy Council and the High Courts have been interpreting and laying down the Hindu Law for over a hundred years and on many points the law declared by them has thoroughly changed the law of the *smṛtis* and *digests*. If all this has been allowed to happen without hardly a demur, there is apparently no satisfactory or convincing reason why an elected Indian Legislature the majority of whose members are likely to be Hindus should not pass an Act dealing with Hindu Law.

Another objection raised even by some retired judges of the High Court is that the present system of laying down the



Hindu Law by means of judicial decisions is quite satisfactory and there is no need of a code of Hindu Law. This objection merely shows that change is rather a painful process for most men. The present method may be a veritable El Dorado or paradise for lawyers and busy bodies fomenting longdrawn litigations. One must stand appalled at the colossal expenditure of time, labour and money which must have been involved during the last hundred years or more in fighting out doubtful points of Hindu Law from the lowest court to the Privy Council. It not unfrequently happens that after a point had been settled by a Full Bench decision of a High Court and after common people and lawyers had followed the law thus settled for fifty years the Privy Council upsets the decision on an appeal by an enterprising litigant. For example, the Bombay High Court decided in 1879 in *Ramji v. Ghaman* (6 Bom. 498) that the adoption by the widow of a deceased co-parcener, who had not her husband's express authority to adopt, was invalid, if made without the consent of the surviving co-parceners. But in 1932 the Privy Council held that *Ramji v. Ghaman* was wrongly decided and that a widow can adopt without her husband's express authority and even in the teeth of the opposition of the surviving members of her husband's family. And when an appeal was made to the principle of '*stare decisis*' the Privy Council was pleased to observe, 'It was pressed on their Lordships that *Ramji v. Ghaman* had been accepted and acted upon in the Presidency of Bombay since 1879 and that the decision should not be disturbed. But this is a belated appeal. It should have been made when *Yadar v. Namdeo* was before the Board.' To ordinary minds this dictum, speaking with the utmost respect, appears strange. If for some reason or other a certain line of argument is not placed before the Privy Council by the counsel of a private party and a wrong decision is given, is it to be supposed that all litigants are to be precluded from trying to set the wrong decision right for all time to come? The Privy Council has not seldom set right a wrong decision given by the Board in a prior appeal. In *Sahu Ram v. Bhup Singh* 44 I. A. 126 the Privy Council held that the pious duty of the son to discharge his father's or grandfather's debts does not attach while the father or grandfather is alive; but in *Brij Narain v. Mangla Prasad* 51 I. A. 129 the Privy Council held (at p. 134) that the pious duty is always there irrespective of the question whether the father or grandfather is alive or dead.

Others opine that one Code for the whole of India is not and cannot be a practicable proposition. In support of their objection they rely on the existence of the several schools of law now prevalent in the whole of India. If India desires to be a self-governing political unity in the future, there is a compelling reason why it should be governed by a single Code of Hindu Law, as it has been governed and will be governed in other substantial provinces of law by codes applicable to all alike. That will help in the direction of solidarity and will be of some use in doing away with dissipated tendencies. There are really only two schools of Hindu Law. And the unification of Hindu Law will be helped by the abolition of the right by birth which is the cornerstone of the *Mitākṣarā* school and which the draft Hindu Code seeks to abolish. Many people are vehemently opposed to the change. But they forget that, what with the rule that any member of a joint Hindu family may alienate his interest for value, what with the Gains of Learning Act, the Hindu Women's Rights to Property Act and other enactments, the real core of the ancient Hindu family system has been removed and only the outer moribund shell remains (vide p. 604 above). Some are opposed to giving along with sons a share to daughters, particularly to married daughters. But here a compromise may be effected by allowing a share to unmarried daughters alone (as *Yaj.* II. 124 and the *Mitākṣarā* thereon expressly provide).

Another provision in the draft Hindu Code which has come in for severe animadversion is the provision that a woman even when taking by inheritance an estate from a male or by partition should be held to become absolute owner thereof. In the first place, if a man's agnate of the 13th degree or a male cognate up to the 5th degree takes an estate absolutely and may squander it away as he pleases, one fails to see why his own widow should not have a like power in the 20th century, whatever may have been the view of ancient works. In the second place, this objection can be met by means of a compromise, viz. that a widow inheriting her husband's estate will take only a limited estate if at the time of her husband's death any one of the compact series of heirs or any direct lineal descendant of her husband (such as a son's daughter or daughter's daughter) be alive, but she will take an absolute estate if none of these exists. Such a compromise should allay all fears about the widow unfairly disposing of the estate against near relations



like the daughter or daughter's son or husband's brother &c. There are numerous other objections, but they are in matters of detail and if once it is agreed that there should be a Code of Hindu Law passed by the Indian Legislature these matters of detail may be adjusted to the satisfaction of most people.

Similarly serious objections are raised to the provisions of the Code as regards marriages and divorce. The draft code proposes to do away with the prohibitions based on sameness of gotra and pravara. This is a desirable change and being optional should not be opposed. Some reasons for this change have been advanced in H. of Dh. vol. II. p. 498. Besides, this provision will affect only a small percentage of the Hindu population. Similarly the insistence on monogamy is opposed by many. In this case some compromise may be arrived at as regards classes to whom two wives are an economic advantage. The provisions about divorce have been overdue. Among the higher castes no divorce has been allowed on any ground whatever. Many hard cases occur where there is no redress and the draft code proposes to give relief in such cases.

On the most contentious subject of adoption the draft code, it is satisfactory to note, has made certain provisions which are in line with the suggestions put forth by me in note 1338a above.

Compelling reasons exist why Hindu Law should be codified as early as possible. Men naturally desire that they should have easy access to the laws by which they are to be governed in all their actions, dealings and relations. It is hardly a commendable or desirable state of things that people should be forced to consult lawyers or bulky textbooks every now and then and even in small and simple matters. The general outlines and provisions of Hindu Law must be within easy reach of every intelligent or inquiring Hindu. This can only happen if there is a code for all Hindus or, if that is deemed impracticable for the present, at least for a large province or for a number of provinces.

## CHAPTER XXXII

### SADĀCĀRA

#### CUSTOMS AND MODERN CUSTOMARY LAW<sup>1606</sup>

From Gautama<sup>1606a</sup> downwards many writers dilate upon the sources of *dharma*. Gautama I. 1-2 states: 'the Veda is the source (*mūla*) of *dharma* and also the tradition (or *smṛti*) and practice of those who know the Veda'. Similarly Āp. Dh. 8. (I. 1. 1. 1-2) says: 'we shall propound the acts (that produce merit) which are evolved from conventions and practices; the authority (for finding out the *dharma*s) are the conventions of those who know the *dharma* and the Vedas'. Yaa I. 4-7 provides: 'dharma is declared by the Vedas and *Smṛtis*; on failure of these two the practice of the *śiṣṭas* is the authority (for finding out what *dharma* is); a *śiṣṭa* however is one whose heart is free from (worldly) desires and (only) such acts of *śiṣṭas* are (to be held as) *dharma* for which no (worldly

1606. This chapter and the next represent, with a few minor additions, two of the four lectures I delivered in November 1944 at the Bombay University as the Sir Lallubhai Shah Lecturer. I am thankful to the Syndicate of the Bombay University for permission to incorporate these two lectures in this volume.

1606a. वेदो धर्ममूलम् । तद्विद्वो च स्मृतिशीले । नी. I. 1-2: अपातः सामवाच्यारि-  
कान्धर्माश्च शास्त्रवाक्यानि । धर्मज्ञसमयः मनसि वेदाश्च । आप. घ. सू. I. 1. 1. 1-3:  
धृतिस्मृतिरिहितो धर्मः । तद्व्याप्तेः शिष्टाचारः समाणम् । शिष्टः पुनरकामात्मो । अयुक्तमाण-  
कारणो धर्मः । वसिष्ठ I. 4-7: धृतिः स्मृतिः सदाचारः स्वस्य च विप्रमातृमनः । सत्य-  
कृतकृत्यपणः कामः धर्ममूलमिदं स्मृतम् ॥ या. I. 7: वेदोऽखिलो धर्ममूलं स्मृतिशीले च  
तद्विद्वाम् । आचारश्चैव साधुतामात्मनस्तु विरेच्य च ॥ तनु I. 6. हरदत्त explains *mūla* in  
Gaol. as *pramāṇa* and *sāmavācārikān* as 'दीर्घवेद्ये स्ववक्त्रा समकः स च विविधः  
विधिनिषेधः विधिष्वेव इति । समवयुक्त आचाराः समवाचाराः तेषु नञः सामवाच्यारिकाः स-  
धुताण्वर्गानिति । कर्मजग्नोऽप्युद्गमनिःशेषतरेषु पूर्वार्थेव आत्मदुष्को धर्मः'. According to  
him *sāmavācārikān* means relating to practices based upon agreements or  
conventions. Manu distinguishes between *śīla* and *ācāra*. The first means, acc.  
to Kullūka and others, such moral qualities as 'devotion to learning, to  
gods and to parents' &c. mentioned in Hārka (quoted by Kullūka). All  
commentators connect 'svasya' in Manu II. 12 and Yāj. I. 7 with  
'priyam', but Pandit Gargopal connects it with '*mūlācāra*' which means  
according to him '*sampradāya*' (In *Satsiddhāntamārtanda* I. 5 p. 49, Nir.  
ed. 1942).



or secular) cause (or motive) can be assigned'.<sup>1607</sup> Manu II. 6 and Yāj. I. 7 declare that Veda (or śruti), smṛti and the practices of the good are the principal sources of dharma. The words employed in these works are *śīla*, *saṁaya*, *ācāra* or *śulācāra* or *śiṣṭācāra*<sup>1608</sup> (the latter three meaning the same thing). Āp. employs both words viz. *saṁaya* and *ācāra*, the first of which probably means 'agreement or convention or usage', while the latter means 'custom'. The word 'custom' now conveys the idea of some antiquity,<sup>1609</sup> while usage or convention does not necessarily convey that idea. A usage may be recent or it may be established by agreement among a certain class of persons (such as traders or craftsmen). We have to see what is meant when it is said that *ācāra* or *śiṣṭācāra* or *śulācāra* is the source (mūla) of dharma. An indication of the meaning is furnished by the word *pramāṇa*: employed by Āp. and Vas. The meaning is that just as the revealed books (Veda) and the smṛtis authoritatively lay down what dharma is, so also in our quest to find out what dharma is in the varying circumstances of life the practices of those who may be called *śiṣṭas* furnish us with the necessary criterion or norm i.e. *śiṣṭācāra* is the touchstone for judging whether an act is in consonance with what the śāstras require us to do. The theory of the ancient writers was that the smṛtis were based on parts of Veda (that consists of *mantras* and Brāhmaṇa texts) which though formerly existent are not now extant or available, that similarly the practices of those who were learned in the Vedas and were deemed to be *śiṣṭas* must be inferred to have been based on portions of Veda not now available. This theory was advanced by such ancient

1607. As to the qualifications of *śiṣṭas*, vide H. of Dh. vol. II. pp. 271-72 where references are given to Baud. Dh. S., Manu, the Mātasyaparāṇa and a few other works. The Tai. Up. I. 11 contains perhaps the oldest extant indication as to who should be regarded as *śiṣṭas*, though that word itself is not used. अथ यदि ते कर्मविचिकित्सा वा वृत्तविचिकित्सा वा स्यात् । ये तत्र आह्वयः संमतिनः युक्ता आहुता अहूता धर्मज्ञानाः स्युः यथा ते तत्र वर्तेन्त तथा तत्र वर्तेयाः । अथा-भ्यासयतेषु । ये तत्र आह्वयः ... धर्मज्ञानाः स्युः यथा ते तेषु वर्तेन्त तथा तेषु वर्तेयाः ।

1608. Vide *Dalglisch v. Guesser* 23 Cal. 427, 429 and *Sariatalullah v. Pran Nath* 26 Cal. 184, 187 for the meaning of usage in modern enactments as distinguished from 'custom'. In *Jaggomohan Ghose v. Manickchand* 7 Moo. 1. A. 264 at p. 282 (mercantile) usage is sharply distinguished from custom in that the former need not possess the characteristics of antiquity, uniformity and notoriety that the latter must possess.

writers as Āp.<sup>1609</sup> and was taken up by many subsequent works. Manu II. 7 also states that whatever dharma has been ordained for any person by Manu, all that has been entirely declared in the Veda for the Veda is full of all knowledge. But it does not follow from this nor is it ever meant that all practices of śiṣṭas are authoritative in matters of dharma. The qualification was added that where the practices of śiṣṭas are clearly referable to or are prompted by a seen motive or by the desire to secure pleasure, there they are not authoritative. Manu (II. 18) restricted the word *sadācāra* to the customs handed down from generation to generation among the four varnas and the mixed castes in the country called by him *Brāhmā-varia* (II. 17). But many other writers did not so restrict it in this way.

We have to distinguish between what are called the sources (*mūla* or *pramāṇa*) of dharma and the *sthūlās* of dharma (Yāj. I. 3 and 7).<sup>1610</sup> The former indicate to the inquiring spirit what dharma is (i.e. they are what are called *jñāpaka hetu*), while the latter must be studied as aids by the expounders of dharma in order to correctly grasp what dharma is, i.e. the different lores (other than Veda and *smṛti*) are not directly the sources of dharma, but are only mediately so. This distinction is an ancient one as even Gautama XI. 19 provides that the king is helped in his administration of justice by the Veda, the *dharmaśāstras*, the auxiliary lores (*āṅgas*), the *Upavedas* and the *Purāṇa*.<sup>1611</sup>

The position of the *Pūrvamīmāṃsā* in relation to the authoritativeness of *smṛtis* and customs requires careful and

1609. आर्षसमये ज्ञायमानकारणः । ... बाह्वृणोका विधत्तेषामुल्लेखाः तादात्म्योपायवृत्तिरिति । यत्र तु योऽनुपलब्धितः प्रवृत्तिर्न तत्र शास्त्रमस्ति । तदनुवर्तमानो नरकाय शरणागच्छति । आय. च. सू. I. 4, 12. 8, 10-13. The first *śloka* may be used for explaining Vas. I. 4; *युष्मानकारण* means 'that has a known or perceptible worldly motive such as covetousness'. Vide note 1653 below. Compare Śr. I. 3. 7 अपि वा कारणाग्रहणे &c. quoted below.

1610. दुराणमन्त्रार्थमीमांसाधर्मशास्त्रादुपनिष्ठाः । वेदाः स्थानानि विद्यानां धर्मस्य च चतुर्दश वा. I. 3, on which *Śiṣṭe*, says, धर्मस्य च चतुर्दश स्थानानि हेतवः । एताभिः च वैधानिकैरभ्येतेष्वपि, while *Śiṣṭe* explains, 'विद्यानां पुरुषार्थसाधनज्ञानानाम् । अत एव धर्मस्यापि स्थानाभ्युपगमाः विद्यायाः अनुविद्याया धर्मप्रयोजकत्वात्.' On I. 7 *Śiṣṭe* says, दुराणादीनां स्वर्गादिकामाध्यायिनिर्वाहसमुल्लेखार्थमादादिकपक्षदा न्यायमीमांसयोः सर्वद्वारा मिमांसादीनामनुष्ठानं तदनुपकारसम्पत्त्यनेन वेदानुयायकतया धर्मो यामानर्थ न साक्षादिति न शक्यम् स्पष्टिताति ।

1611. तस्य च व्यवहारो वेदो धर्मशास्त्रावङ्गानुपपत्तेः पुराणम् । मी. XI. 19,



detailed consideration. In I. 3. 1-2<sup>1612</sup> Jaimini considers the question whether such *smṛti* injunctions as 'one should perform the *Aṣṭakā śrāddhas*',<sup>1613</sup> or 'one should construct a tank or set up a *praṣā* (place for free distribution of water to thirsty travellers)', or 'tufts of hair should be kept on the head' (at *śaula* according to the *gotra*) are authoritative and establishes the conclusion that they are authoritative, since such *smṛti* injunctions equally with Vedic ones are addressed to the same persons (*viz.* the followers of the Veda) who have to act according to them. The idea is that those who perform the acts expressly enjoined by the Veda are also seen to perform the acts enjoined by such *smṛtis* as that of *Manu* and therefore the principal reason why these *smṛtis* are authoritative is the fact that those who know the Veda accept these *smṛtis* as authoritative and hold fast by them, as *Medhātithi* on *Manu* II. 6 says citing some verses from his own work called *Smṛtivilēka*.<sup>1614</sup> *Śābara* endeavours to show that there are indications (*liṅga*) in the Vedic texts pointing to the existence of what is prescribed in the *smṛtis* e.g. he cites the Vedic verse 'yām janāḥ' as indicative

1612. धर्मस्य सम्बन्धमूलत्वाद्वाच्यजननेषं स्यात् । अपि वा कर्तुं सामान्यापमानमनुमानं स्यात् । जै. I. 3. 1-2. The word अनुमान is here used in the sense of स्मृति. 'अपि वा पक्षो व्याचक्षते । प्रमाणं हि स्मृतिः । ... ह्यन्यत्सर्वस्मिन्नेव कर्तुं सामान्यापमानं वैदिकपदार्थयोः । तेनोपपन्नो वेदसंयोगवैयर्थिकानाम् ।' *अथर्व*, about अष्टका he says 'अष्टकादिद्वारा मन्त्रा वेदे दृश्यन्ते वा' जनः प्रतिनन्दन्ति वेदमाप्तुः । That verse is, वा जनः प्रतिनन्दन्ति रात्रिं धेनुमिवाप्तीन् । सेतसरस्य वा पत्नी सा नो अस्तु सुमङ्गली । This occurs in *आप. न. वा.* II. 10. 27, in *पाराशरयुत* III. 2 and in *अथर्ववेद* III. 10. 2 where we have वा देवा etc. Acc. to *प्रभाकर* the topic of *Jai. I. 3. 1-2* is not such *smṛti* texts as those on *Aṣṭakā*, but the Vedic verse वा जनः itself. The *न्यायसूत्रा* p. 136 adds 'अष्टकायै सुरापनेषं स्यादिति तत्राष्टकादेव तारादिवकाश-कलादेवा वै संवासरस्य पत्नी वद्वदेति सेतसरपत्नीत्वसंस्तुताष्टकाशकलाशवाचका-दिद्वयं स्पष्टमेवेति'. The word कर्तुं सामान्यात् in the *sūtra* is explained in the *मयूखनाटिका* as 'औपदेशादीनां वैदिकपदार्थानां ये कर्तारस्त एव अष्टकादिस्मृतिनामिति कर्तुं सामान्यापमानमनुमानम्' (on *जै. I. 3. 4* p. 27); while the *न्यायसूत्रा* (p. 125) proposes also another explanation 'यत्र स्मृतिकर्तृणां मन्त्रादीनां वैदिकपदार्थकर्तृणां तदानीं तत्तानां शिक्षायां वैयर्थिकत्वं समापत्वाद् इदानींतत्त्वमन्त्रादीनामनुपपन्नो वेद-संयोग इत्यर्थः'.

1613. Vide *Āśv. Gr.* II. 4. 1 ff., *Sān. Gr.* III. 12-14, *Pār. Gr.* III. 3 for *Aṣṭakā śrāddhas*. Passages of the *smṛtis* about tanks and *praṣā* are set out in H. of Dh. vol. II pp. 889-890. For tufts of hair kept in *śaula* vide H. of Dh. vol. II. pp. 261 and 264.

1614. वैदिकैः स्मृतिसामान्याभ्यपरिब्रह्मद्वयार्थैः । सामान्यवेदमूलत्वात्स्मृतीनां वेदमूलता । quoted in the *शास्त्रदीपिका* on *जै. I. 3. 2*: 'स्मृतिवैदिकवैयर्थ्यं स्यादप्युपपन्नमप्य । कर्तुः कर्मो वापि विद्युन्वेत न जातु नो । ... सामान्यकारणं मुख्यं वेदमिति परिग्रहः । तदुक्तं कर्तुं सामान्यादनुमानं श्रुतिः प्रति ह त. from *स्मृतिविवेक* by *मेघा.* ७० मय. II. 6.

of *astakās*, Rg. X. 4. 1 of *prapās*, Rg. VI. 75. 17 of tufts of hair. The objection may be stated as follows:—The *smṛtis* are composed by human authors (i. e. they are *pauruṣeya*) and so have no independent authority in matters of *dharma*, as a man may say what is either false or mistaken. If it be said that the *smṛtis* really propound what is stated by the Veda, then they are practically superfluous and useless, and not being Veda they should be discarded (*anapekṣa*). To this the reply is that *smṛtis* are generally authoritative, as they must be held to be based on Veda because they are composed by men (like *Manu*) who were followers of the Veda, because what the *smṛtis* lay down has been consistently followed from generation to generation by the *śiṣyas* and because it is possible to regard the Veda as their source. To the question why the Vedic passages on which the *smṛti* rules are postulated to have been based are not seen or found by us several answers were proposed by different writers. One view was that just as Vedic indications about locks of hair lead to the inference of *śruti* texts enjoining the keeping of tufts on the head, so the fact of the existence of such rules leads to the inference that *śruti* must have contained injunctions corresponding to all *smṛti* prescriptions. Kumārila raises objections to this view. Inference is based on perception (*pratyakṣa*) and invariable concomitance (*vyāpti*). There is no *vyāpti* between the *smṛti* and *śruti* texts that are never found pronounced by any one, so no inference is possible and it would be like one blind man following another.<sup>1615</sup> *Manu* must have composed his *smṛti* on finding that *ācāryas* preceding him performed certain acts as based on Veda. These last must have believed that their predecessors also acted on the same belief. Hence there is what is called an 'andha-paramparā' on this hypothesis. And further this hypothesis of the inference of *Śruti* in all cases is opposed to perception, since as a matter of fact hundreds of *Śruti* passages are known that can be the basis of corresponding *smṛti* texts. Another view is (and Kumārila holds that it is somewhat better than the preceding view) that one should infer that the Vedic passages that were the basis of *smṛtis* are lost (*utsanna* or *pralīna*). Some support is lent to this by such Vedic texts as 'anantā vai vedāḥ' (*Tai. Br.* III 10.

1615. तन्मनुकमन्मदरम्परान्वाद्यदि । न हि चोदना न कदाचिदुच्यते तस्याः सर्वप्रथमवशाद्विषयसंभवाच्च दुर्लभतरमस्ति तन् । ... लिङ्गादीनां तु निपत्ताक्षिपमनुच-  
लिङ्गापत्तिमानकारणमस्ति तद्वत् । तेन वदे प्रतीत्यदुपपत्तुमानमेव । तन्त्रयामिका p. 164 on  
नै. 1. 3. 2.



11.) and by Āp. Dh. S. I 4. 13. 10. Even this view is not acceptable to the Tantravārtika and most of the Mīmāṃsaka. The objection against the 2nd view is raised as follows. Even Buddhās and other heretical sects<sup>1616</sup> would advance the argument that their works also are based on śruti texts that are now lost, and any one may regard anything as authoritative by pretending that the basic vedic texts are lost. Further the Mīmāṃsā view that the Veda is eternal (*nitya*) would be refuted if it were admitted that some portion of the Veda is lost. There is not much difference between the first view and the second view. Therefore Kumārila propounds the third view viz. that smṛtis are to be inferred as based on Vedic texts that are already in existence<sup>1617</sup>. If an objection is raised against this hypothesis that it must be explained why such Vedic texts (the bases of smṛtis) are not seen or found, the Tantravārtika replies in a famous *kōrikā* that as the Vedic *śākhās* (the several branches of the Veda) are scattered about (in various countries), as men (followers of the Veda) are negligent and unmindful (i.e. they do not visit all the countries and so are unable to have a complete knowledge of all Vedic texts) and as several rules are declared in different contexts even when occurring in the same *śākhā* (and not at one place) it is not always possible to point out the Vedic sources of smṛti texts. If an objector were to ask: 'why were not the Vedic passages themselves (that are the sources of smṛti rules) embodied bodily into the smṛtis,' Kumārila replies that this was not done from the fear of the loss of the correct arrangement of the Vedic texts as traditionally handed down. The Veda is principally concerned

1616. यदि तु सर्वान्नाशाकामुक्ता कल्पेयं ततः सर्वासां ब्रह्मदिभ्युत्पत्तिरिति तद्वहारे  
प्रामाण्ये असम्भवे । परदेव च यदुच्यते स तु सर्वलोकाशाकामस्तत्र निमित्तं प्रमाणीकुर्वते ।  
अत्रवार्तिक ५- 163 ; निष्ठासुमेवयसो वो वाच्यमसम्भवे । तयोरेवयसोऽत्र न वेदः कश्चि-  
द्वैक्ये । स्मृतिविवेक ५. ४7 मेधाः on मनु II. 6.

1617. यदा विद्यमानशास्त्रादभ्युत्पत्तिरुक्तमेवास्ति । कथमनुपपत्तिरिति चेदुच्यते ।  
शास्त्रासां विषयीकृतानुपपत्तौ भ्रमादितः । नापामकरणरचनास्मृतेर्नृते न दृश्यते । यत्  
किमपि वेदवाक्यान्वेयं योपसृष्टीकनीतिः । योपसृष्टविनाशनीतिः । निमित्तादुपपत्तौ नि-  
स्तरापात्रोऽवेत्यप्युच्यते । अतोऽशास्त्रात् । कश्चिद् कश्चित्परार्थविशेषादप्युच्यते । तथापि  
॥ कश्चित्पुण्यविशेषादप्युच्यते । तेन कतुपकार्यमात्राः केनचित्किमितेनाहुतवमाणाः  
पुरुषधर्मता भजन्ते । तथा-महयद्वास्तु सद्य न संवेदे-सम्मात्रं महयद्वास्तु-इत्येव-  
माहुः । तत्र यदि वाक्यान्वेयं वाक्यानुपपत्त्याप्युच्यते ततः कथमनुपपत्त्याप्युच्यते-  
विरोधः स्यात् । अनेन च निर्देशमात्रेणैवार्थाद्वैक्येण विधिमात्रमधीयीत कर्मोपनिषत्त-  
वा । तत्र वेदुक्तं तदुच्यते । तत्रवा. on जै. I. 3. 2 p. 164. For महयद्वा. Ac. vide  
जै. स. II. 5. 1. 5 and for सम्मात्र Ac. जै. स. II. 6. 10. 2 (q. in II. of Dh.  
vol. II p. 803 n. 1917 and p. 331 n. 346 respectively).

with sacrifices, though now and then there are rules addressed to men for regulating conduct only. People would only study the Vedic sentences contained in the *smṛtis* (that are concerned principally with conduct) where they would be arranged in a different order according to subjects and there would thus be loss of the arrangement of the Veda as originally delivered. Viśvarūpa<sup>1618</sup> (on Yaj. I. 7) quotes the above verse of Kumārila and states that there are thousands of *smṛti* rules that have their source in the Veda; he and Kumārila instance the rules against talking with (or coming in contact with) a woman in her monthly illness or the rule against assaulting a brāhmana, or the rule about the sin of killing an *Ātreya* woman &c. Medhātithi on Manu II. 6 has an elaborate discussion on this very topic and quotes several verses from his own work called *Smṛtiviveka*<sup>1619</sup>. He does not approve of the first two views and follows Kumārila's view. Mīmāṃsa writers and commentators like Medhātithi say that Manu and other authors of *smṛtis* brought together for easy comprehension matters that are scattered about in the various Vedic texts, that are either not known to the students of the several *śākhās* or that cannot be brought together by men of ordinary or weak intellect.<sup>1619a</sup>

The general proposition that *smṛtis* are authoritative being established, a further question arises. What is to happen if a *smṛti* rule conflicts with the rule of the Veda? Jaimini deals

1618. स्मृतिवृत्ता हि विधया सन्ति चेदे स्यान्ननु । संप्रदायविनासादु भर्तुः शास्त्रादु-  
संहतिः ॥ शास्त्रद्वयस्य तदपार्थं ननुपपत्तौ सहा । न संप्रतिष्ठिति विधिः स्मृतिभूतत्वसंगता ॥  
आत्रेयाः षोडशैतन्मयी भवेदु पातवित्तरचधि । इत्थं तस्मादुनिष्ठस्य नापक्रामेदितोर्लि च ॥ अमा-  
रुच्य च सौतर्ज्यं हिरण्यं भार्गमित्रचम् । सप्तसंपत्तये चैवं भविष्ये सुवासना ॥ ईश्वरस्य ०० पा.  
I. 7. pp. 14-15.

1619. शास्त्राः काश्चित्समुत्पन्नाः पक्षो नैव सतो मयः । पक्षेतिगच्छन्मानं हि बहुरस्ये  
वसन्तये । उपपन्नतः पक्षो विधितानां तत्तत्ततः । उत्तरपादिसमादाहः नापको ह्यवने द्रव्यः ॥  
मेधा. on मनु. II. ८.

1619a. अशास्त्रोऽप्युक्त एव ततः शास्त्राः किन्तु विप्रकीर्णत्वे धर्मोः कस्यचिच्छब्दा-  
स्वाध्यायसहाय्योक्तौ तस्मैनामुत्पत्तिः कस्यचिच्छब्दार्थं कश्चिदेवा कश्चिन्मन्त्र इत्येवं विप्रकीर्णानां  
मन्त्रादुपोद्घोषसंदर्भं ह्यन्वयार्थोपाधि चक्रे । मेधा. on मनु. II. ८; उपपन्नतः एव स्मृतिभूतत्वात् ।  
अतः संप्रत्यपि विप्रकीर्णः काश्चिद्विप्रकीर्णोऽप्युक्तोऽप्युक्तो विप्रकीर्णत्वाच्च शास्त्रान्तरास्वा-  
धिभिः शास्त्रान्तरास्वाध्यायसहाय्यभावात् तादृशैर्नार्थविप्रकीर्णानां तदुपलम्भेति वा मन्त्रधीनि-  
त्युपसंदर्भोपादानादुपसंदर्भकत्वं स्मृतिव्यवधानमिति न वैतर्क्यम् । स्मृतयः प्रमाणमिति सिद्धम् ।  
शास्त्रदीपिका.



with this question in I. 3. 3-4,<sup>1620</sup> which form a topic that states an exception to the general rule contained in Jai. I.3.1-3. Śābara gives three instances where there is apparently a conflict between the prescriptions of the śruti and those of smṛti. The Veda says, 'the priest should chant (the *stotra*) after touching the *audumbarī* post', while smṛti says 'the whole of the *audumbarī* post should be covered with cloth'. The Veda says 'one to whom a son has been born and whose hair is still dark (and has not turned gray) should consecrate the Vedic fires', while smṛti says 'a man should observe Vedic studenthood for 48 years'<sup>1621</sup>; the Veda says 'when the Agnistoma rite is finished then one may eat (the food prepared) in the house of the sacrificer', while smṛti says 'the food of one who has undergone *dikṣā* for a sacrifice may be eaten after he purchases the soma plant'. In these cases the proposition enunciated by Jaimini is that 'in case of conflict (between an express śruti rule and a smṛti rule) the smṛti rule should be discarded, for when there is no conflict (with an express śruti) inference may be made (that a smṛti rule is based upon some Vedic text)'. The examples may be explained as follows: The '*audumbarī*' is a post of *udumbara* planted in the *sadas* in the performance of the Agnistoma; the *stotras* (other than *Bahispavamāna*) are chanted near the *audumbarī* post in the *sadas*. Vide H. of Dh. vol. II p. 1155 for the fixing of the *audumbara* post in the *sadas* and p. 1185 for the chanting of *stotras* near the *audumbarī*. If the whole of the post be covered with cloth, it would not be possible to touch the post, but only the cloth would be touched. So there is contradiction. If a man is to consecrate Vedic fires when he has a son and his hair is dark, he must be between about 20 and 40 (i. e. a young man), but if a man were to observe *brahmacarya* for

1620. विरपि स्वमेव स्यादुसति ह्यनुमानम् । हेतुदर्शनस्य च । जै. I. 3. 3-4; अथ यत्र स्मृतिविरोधस्तत्र कथम् । यथोदुम्बराः सर्वेवने 'अदुम्बरीं स्मृत्विरोधात्' इति श्रुत्या विरुद्धम् । अथाचत्वारिंशद्वर्षाणि वेदब्रह्मचर्यचरणं 'जातदुक् कृष्णकेशोद्गीतादधीत' इत्यनेन विरुद्धम् । अतिराजकोऽभोगपात्र इति 'तस्माद्वर्षीयोनीये संस्थिते यजमानस्य दूरेऽक्षितव्यम्' इत्यनेन विरुद्धम् । तत्त्वमार्णे कर्तुं सामान्यात् । इत्येवं जने जने । अज्ञायत्ताद्वर्षाभोग इत्यप्यभिधीते । ... तस्मादुक् स्मृतिर्विरुद्धा स्मृतिरप्यभाषमिति । अतएव सर्वविधनादि तादृशणीयम् । अथर.

1621. For अथाचत्वारिंशद्वर्षाणि पौराणं वेदब्रह्मचर्यम् । अतुर्विंशतिं द्वादश वा पविषेद्व्यम्... । यद्यपान्तं वा जीवितव्यमभिरुत्वात् । कृष्णकेशोद्गीतादधीतेति श्रुतेः । For अतिराजको &c. vide अथ. प. ५. I. 6. 18, 16 and 23 'सङ्ग्राहमभोगव्यम् । दीक्षितोऽतिराजकः'. It may be noted that अप. mentions also several other views such as 'अग्नीषोमीयसंस्थापाने । ह्यदार्णे वा यथाकां दीक्षितव्यं भोक्तव्यम्' (I. 6. 18, 24-25).

48 years, he would be about 52 to 56 years of age before he married (as the *upanayana* of a *br̥hmana* was to be performed generally in the 8th year or from the 5th year onwards at the most). Only a married man could consecrate Vedic fires. But a man's hair when he is fifty-two years of age or more can hardly be all dark. Therefore there is contradiction between the rule derived from the *Veda* and that derived from *smṛti*. In the *Jyotiṣṭoma* (which generally occupied five days), the *dikṣā* (purification and initiation of the sacrificer) takes place on the first day in the afternoon (vide H. of Dh. vol. II pp. 1134-1136). *Soma* is purchased on the 2nd day of the *Jyotiṣṭoma* (*ibid.*, 1140-4) and the animal is sacrificed for *Agni* and *Soma* on the 4th day (*ibid.*, pp. 1158-59). According to *śruti*, therefore the food prepared in the house of a *dikṣita* may be eaten only after the 4th day, while *smṛti* says that it may be eaten after the purchase of *soma* on the 2nd day. In this way there is contradiction. Kumārila<sup>1622</sup> does not agree with Śābara as regards these examples in particular and as regards the general attitude towards *smṛtis* that are accepted by Vedic followers. He makes great efforts to explain how there is no real conflict in the cases cited by Śābara. As regards the cloth covering the *audumbari* he says that it may cover the bottom and the upper portion of the post and leave a space of two or three finger-breadths in the middle uncovered (so that the *audumbari* post can be touched in that particular portion), that (p. 188) there is a passage in the *Śātyayani*

1622. The *sūtra* (Jai. 1. 3. 3) is read as *अनपेक्षं* or *अनपेक्ष* and with both readings it has been explained in different ways from ancient times. The *तन्त्रवार्तिक* says 'अतिमार्गविज्ञानविरोधे यदुपदेक्षमपेक्षानिर्णये परम वापेक्षणीयमन्यत्रालीलि एवं पाठद्वयेपि पूर्ववाच्यमन्यत्रानुसृत्यैव सम्पद्यते यदुपदेक्षं तत्रापि परमं स्वादिति' (p. 192); 'श्रुतिविरोधे परमानाम्तरानपेक्षं श्रुतिवाच्यं तदेव परमं स्याच्च तु श्रुतिवाच्यं परमादत्तत्वे विरोधे श्रुतेः श्रुत्यनुमापकत्वं' मधुखण्डिका. On this interpretation the *sūtra* means 'in case of conflict between *śruti* and *smṛti*, the former which is independent is authoritative, for only when there is no conflict does an inference arise that *smṛti* is based on *śruti*'. The *तन्त्रवार्तिक* when it explains Jai. 1. 3. 3-4 as referring to *Bauddha* and the like takes 'anapekṣya' to mean 'deserving to be discarded'; 'तस्मादुर्ध्वं प्रति कपीवाहमेवंश्रुतिविकं परमान्वेनानपेक्षं स्वादिति निश्चयः' p. 196. Śāhūr in his *भाष्य* on *वेदान्तसूत्र* II. 1. 1 appears to adopt Kumārila's 2nd interpretation of Jai. 1. 3. 3. 'विपक्षिणो च श्रुतीनामनपेक्षतन्त्रेऽन्यतरपरिग्रहेऽन्यतरपरिग्रहे च श्रुत्यनुमापिकः श्रुत्यपि परमानमपेक्ष इतराः । यदुक्तं परमानमपेक्षे विरोधे तत्र...तु मातामिति ।' कुल्लूक On *ननु* II. 1.4 quotes Jai. 1. 3. 3 and explains 'श्रुतिविरोधे श्रुतिवाच्यमनपेक्षमन्यत्रानपेक्षणीयम् । असति विरोधे श्रुत्यनुमानमपेक्षः ।'



Brahmana which refers to the cloth covering the audumbari (and so there may at most be an option), that as regards the taking of food in the house of a dikṣita after the purchase of *sona* there is a śruti passage in the Atharvaveda (pp. 181 and 189) similar to the smṛti passage (and thus there is no conflict between śruti and smṛti, but between śruti and śruti, which would lead to an option) and further the smṛti rule may apply in the case of a man in distress (*āpad-dharma*), that smṛti does not prescribe an absolute period of 48 years for the study of Veda, but Baud. Dh. S. itself allows several alternative or optional periods and so no question of conflict with śruti arises. Kumārila's own position is this: In the case of apparent conflicts between śruti and smṛti, various methods of interpretation and reconciliation are possible. Each of the two may be given its proper scope as referring to different subject matters (which is called *viśaya-vyavasthā*); it is also possible to hold that smṛti is based on some śruti texts already existing but not found at the time of discussion, but which may ultimately be found, in which case there will be an option, though the latter is to be avoided as far as possible as it is liable to eight faults (vide *Tantravārtika* pp. 174-175); or the two may be reconciled even when referring to the same subject matter e. g. a man may have dark hair even when he is 52 or more and the smṛti may be taken as meant to refer to such a man, while the śruti states the general rule about the age when consecration of Vedic fires was to be made. Therefore Kumārila holds that all that is meant by Jaimini and even by Śābara is that there is a great distinction between śruti and smṛti in that the former is *apauruṣeya* and an independent authority, while the latter has a human author (liable to err), is either actually based on the Veda or is inferred to be so based, that the two therefore can never be said to be quite alike each other as regards their authoritativeness and that lastly smṛti is not in itself to be regarded as unauthoritative<sup>1623</sup>. Kumārila therefore suggests that the proper subject of discussion in Jai. I. 3. 3-4 is the works of Bauddhas, Sāṅkhya, Yoga, Pāñcarātra, Pāśupata and other heretical sects and the practices of *mlecchas*. These works contain some matters such as the emphasis on *ahimsā*, truthfulness, restraint of senses, charity and compassion, which are also emphasized in the Veda, but these works are not

1623. अनाद्यैर्ब्रह्मविद्यायोगविज्ञानेन ब्रह्मैवेति । नाप्यनानेन वाच्यत्वं न वाच्यवद्वक्तृ-  
द्वयत्वं । तन्त्रवार्तिक p. 194.

generally accepted by the followers of the Veda, are based on specious and false reasoning only (they are *hantukas* in the words of Manu), that they deny the authority of the Veda. Therefore Jaimini means that these works of heretic sects are not authoritative in matters of dharma as they are opposed to the Veda and should be discarded. For want of space it is not possible to set out in detail the interesting discussion in the *Tantravārtika*. The *Jaiminiya-nyāya-mālavistāra* also gives another explanation of Jai. I. 3. 3.

Śābara (on Jai. I. 3. 4) explains that the three *smṛti* passages stated above are not authoritative since it is possible to point out how they originated in a visible worldly motive such as greed. When a visible motive can be pointed out for any *smṛti* text, it is not proper to infer that it is based on the Veda and has an unseen spiritual motive. Śābara<sup>1624</sup> postulates the reasons in the way of a modern man finding fault with priests. Some priests covered the whole of the Audumbari post with cloth, because they coveted the cloth as part of the fee; others who desired a free meal when hungry took food at the house of a *dikṣita* even after he had purchased the Soma plant; certain others in order to conceal their absence of virility went in for Veda study for 48 years. The *Tantravārtika* tries to show that in all these cases there is really no visible motive such as covetousness (pp. 188-189).

Śābara gives an alternative explanation of this sūtra (Jai. I. 3.4) and makes a separate topic (*adhihikarṇa*) of it. The reasons<sup>1625</sup> for giving an alternative explanation of a sūtra or *adhihikarṇa* are two, viz. dissatisfaction with the explanation already given or the wide scope of the subject under discussion. In I. 3. 3 passages from *smṛtis* were cited which were apparently in conflict with *śruti*. If they were really in conflict, that one reason alone is more than sufficient to render the *smṛtis* invalid. Therefore to say further that those *smṛti* passages originate in worldly motives like greed does not add any very substantial reason for the abandonment of *smṛtis* as authoritative. Therefore Śābara makes another *adhihikarṇa* of sūtra 4 of Jai. I. 3.

1624. हेतुद्वयसम्बन्धः । जै. I. 3. 4: लोभाद्वास आदिनामाना ओदुम्बरीं कृतान् वेष्टितवन्तः केचित् । वसतुलेषाजिम् । सुमुक्तमाणाः केचित् कौतराजकरं भाजनमाचरितवन्तः । आरुह्यं यन्माद्वयस्तथावाच्यत्वारिहृत्यानि वेदमहात्म्यं चरितवन्तः । तत्र एषा स्मृतिरसम्बन्धे । इति च.

1625. सर्वस्यास्यधिकारिणाम् द्वयमेव योजनम् । पूर्ववापत्तिर्यो वा विषयवापत्तिरेव वा । सम्प्रसारिक p. 186.



He cites *smṛti* passages which are not opposed to *Veda* at all and says that such passages have seen a worldly motive such as covetousness and it is not proper to suppose that they are based on *Veda* and are therefore authoritative, when a visible purpose or motive can be ascribed to them. The result of the explanations of I. 3. 3-4 given by Śabara would be that *smṛti* rules that are opposed to *śruti* rules and *smṛti* prescriptions that can be shown to have a clear worldly motive are not authoritative or absolutely binding, while the rest of *smṛti* texts are authoritative.<sup>1626</sup>

Śabara cites on Jai. I. 3. 4 (when taken as a separate topic)<sup>1626a</sup> two examples; (1) the *adhvaryu* priest takes (as his fee) the cloth used in the *Vaisarjana homa*; (2) they perform the gift of the elephant (i. e. the cloth covering) of the sacrificial post. Śabara says that these passages are not opposed to any *śruti* text but instead of inferring a Vedic text as their basis it is far better to hold that there is a manifest worldly motive for these rules (viz. covetousness of the *adhvaryu*) and so these *smṛti* passages need not be looked upon as authoritative.<sup>1627</sup>

This discussion raises an important doctrine which frequently figures in *dharmasāstra* works. The doctrine is expressed

1626. न ह्येते देवी होमसाराधमानं कर्तते । ह्यध्वार्युः सोम एव हेतुरिति । ... अथ, क्षुत्तिरिच्छते ह्यकारणं च स्मरणमवमानं करोऽवधमायामिति । शास्त्रदीपिका on Jai. I. 3. 4.

1626a. अधिकरणान्तरं वा । वैमर्त्यमर्त्यानीवं वासोऽध्वर्युर्होतृ इति, यूपहस्तिनो दानमाचरन्ति इति । बलवृत्तानाम्पायवमाणमिति याते । अजानां स्मृतिः । अत्रान्धमूलम् । सोमादाचरिष्यन्तः केचित्तु एषा स्मृतिः । उपपन्नतरं चेत्तु वैदिकनिश्चयकल्पनात् । अथ ०० जे I. 3. 4. यथाकार is his *bracket* refers to this example (on Jai. I. 3. 13 p. 285) 'ह्यध्वार्युः सोम एव हेतुरिति । अथ च सिद्धमायमानादिनामपि हेतुदर्शनादवमानं यूपहस्तिनो दानमाचरन्तीतिवत्मादिषु'.

1627. For the *Vaisarjana homa*, vide H. of Dh. II. p. 1155. In this a piece of fresh cloth is spread over the sacrificer (who touches the *adhvaryu*), the sacrificer's wife (who touches the *yajamāna*), the brother and sons of the sacrificer (who touch the wife). In the *Vājapeya*, the sacrificial post was 17 *aratnis* in height and 17 pieces of cloth were employed to prepare the appearance of a turban on the top when enveloping the *yūpa* with a girdle. The figure presented by the cloth covering the *yūpa* was called *yūpahastin* (probably because it looked like the head and trunk of an elephant). 'नामपेयादौ यूपपरिष्ठापनादन्तं यूपहस्तिनाम्नां', *मयूखमाहिका*. 'यूपवेष्टनं सप्तदशभिर्लक्षैर्दुग्धधने वा परिष्पचयकाले' *ताम्रपा*, अ. 14. 1. 20 and the com. on Kāt. Sr. says 'रसमापत्तिश्चयकाले सप्तदशभिर्लक्षैर्दुग्धधने वेष्टनं कर्तव्यम् । अथवा यूपदुग्धधने विविधमूलं तथैव कर्तव्यं न तु वेष्टनमात्रम्'.

in this form viz. when a visible motive or purpose is obvious in the case of a rule or prescription it is not proper to ascribe an unseen or spiritual purpose or reason for it. This doctrine is older than even Āp. Dh. S. I. 4. 13. 11 which says, 'where men act because they find pleasure in so doing, there śāstra has no scope'. Śābara also says,<sup>1628</sup> 'those rules (in the smṛti) that have a seen purpose derive their authority from that fact, while those that have no visible purpose may be inferred to be based upon the Veda (and derive their authority from that)'. These words of Śābara are quoted by Kullūka on Manu III. 7 where Manu states that a girl should not be selected as a bride from a family that neglects the *śaśkāras*, in which no male children are born, in which there is no Veda study, the members of which have on their bodies long and thick hair, that suffers from such diseases as piles, dyspepsia, epilepsy, black and white leprosy. Kullūka remarks that the works on medicine hold that such diseases are inherited and so if such a girl be married the progeny might suffer from these diseases, and thus this prohibition is based on a visible motive. From this a very important conclusion is drawn by dharmaśāstra writers viz. if one while performing a rite or when engaged in any matter acts contrary to a rule that has a seen purpose, the rite or matter does not become invalid or void, while where a rule is based on an unseen or spiritual purpose and it is infringed, the act itself becomes void or invalid. Yaj. I. 52 and 53<sup>1629</sup> prescribe among other things that the bride to be chosen by a man must be free from (incurable) diseases, must have a brother living, must not be a *śvayāda* of the bridegroom or must not have the same *gotra* or *pravara* as that of the bridegroom. On this the Mī. remarks that if a man marries a girl who is suffering from an incurable disease, the marriage is valid, only he does an act which runs counter to seen results (i. e. he may suffer the consequence that

1628. तथा अल्पपरिवर्तनियमानामाचारानां दृष्टार्थत्वमेव प्रामाण्यम् । ... ..  
 तेन ये दृष्टार्थास्तैस्तत् एव प्रामाण्यम् । ये त्वदृष्टार्थत्वे तु वैदिकदम्भानुमानमिति । शबर on  
 जै. 1. 3. 2, quoted by कुल्लूक on मनु III. 7; अदृष्टं हि तत्र कल्पनीयं स्यात् तत्तत्त-  
 दाक्षयं दृष्टं सम्भवति । शबर on जै. IX. 3. 3; तत्र दृष्टं परोक्षमसुरक्ष्यं न कल्प्यमदृष्टं  
 कल्पयितुम् । शबर on जै. X. 2. 23. The *svayambhūta* on जै. I. 3. 4 p. 158 says, 'दृष्टं  
 संभवापरदृष्टकल्पनमनुकमिति व्यापारः', यद्य तु परीत्युपलब्धतः अनुमितं तत्र शास्त्रमस्ति ।  
 भाष. प्र. सू. I. 4. 12. 11.

1629. अतिपुत्रमात्राचारो लक्षणो द्विपुत्रद्वहेत् । अल्पपुत्रिका कान्तामलपिण्डा  
 वरीयसीम् । अरोपिणीं प्रपुत्रतीमसमानार्थेनोत्तमान् ॥ या. I. 52-53; अपिण्डासमाच-  
 नोवाप्तमानपराह भार्यात्वमेव नोत्पद्यते । रोपिणादिषु ह भार्यात्वे दत्तद्वये दृष्टमित्येव  
 एव । मिताक्षरा.



his children may be diseased), but if he goes through a ceremony of marriage with a girl who is a sapindā or of the same gotra or pravara there is no valid marriage and the girl is not his legal wife. No clear visible purpose can be associated with the prohibition against marrying a sapindā or sagotra girl; hence there must be a spiritual purpose in that prohibition and so if one infringes it the act itself (viz. marriage) becomes void.<sup>1630</sup>

The *Tantravārtika* of Kumārila has as usual a very long note on this discussion. He does not see eye to eye with Śābara. He says<sup>1631</sup> that the *Mīmāṃsā* is concerned with the investigation of dharma, that *śruti* is the prime authority in matters of dharma, that *Mīmāṃsā* has concern with *smṛti*s only so far as their authoritativeness in matters of dharma goes, that just as agriculture and the like are not discussed in *Mīmāṃsā* works because they have a purely secular purpose, so all acts that men do for a visible worldly purpose have no bearing on the investigation of dharma and that therefore the *bhāṣyakāra* (Śābara) was not quite right in saying that such practices as rising to receive an old man or a teacher have a visible purpose and are authoritative on that ground. He further remarks that visible and invisible or spiritual purposes are often inextricably mixed up. When the Veda prescribes 'he pounds the grains of paddy' or enjoins a sacrifice like the *Kāriri* for bringing down rain, there is a visible purpose therein (e.g. the rice grains have to be freed from husk before boiled rice for oblations can be prepared). So even when an act has a seen purpose it may still have Veda as the basis; so also an act such as rising to show respect to a teacher may have a seen result (such as the teacher being pleased teaches the pupils with enthusiasm) as well as an unseen result (viz. completion of Veda study without obstacles). Therefore he argues that all

1630. In a very recent case (*Madhav Rao v. Raghoeendrarao* 48 Bom. L. R. 196) the Bombay High Court has expressed doubts about the logic or reasonableness of this doctrine of the *Pūrvaśraimāṇsā* in relation to marriages of sagotra parties.

1631. इदार्थमादेशं मानाश्रयमिति । एतद्वदुक्तम् । धर्मं प्रति यतोऽपेक्षं मानाश्रयं यत्तुम् स्मृतौ । तस्मात्कृपादिप्राप्त्यायुक्त्यापानो न युज्यते । न हि यावत्किञ्चिदाचरणं तस्य सर्वत्र सुलभिहं प्रमाणमिति । धर्मविज्ञानाधिकारात् । यदि च सर्वसुखमनादीनां केवलं इदार्थमेव प्रयोजनं इत्यदिदृष्टम् तदायमानाश्रयमेवेति नोक्त्या सिद्धम् । ... न चात्रयानादीनां इतिद्वयम-यानादीनां च इदार्थानामर्थद्विकल्पः । तत्कार्तिक pp. 165-166.

*smṛtis*<sup>1532</sup> are authoritative according to the purpose they serve, that whatever portion of the *smṛtis* is concerned with *dharma* and *mokṣa* (final release from *saṁsāra*) has its origin in the Veda and whatever is concerned with wealth and the satisfaction of desires (*artha* and *kāma*) is based on worldly practices. In this way are to be explained the didactic portions of the *Mahābhārata* and the *Purāṇas*, the episodes in these being useful as *arthavādas* (eulogies of what are prescribed as religious duties), the description of the several divisions of the earth being useful for indicating what countries are suitable for the performance of *dharma* and the enjoyment of its rewards and being based partly on Veda and partly on direct experience. Similarly the auxiliary lore (*śāstras*) of the Veda (such as phonetics, grammar, metrics &c.) are partly based on the Veda and partly on worldly experience. *Mīmāṃsā* and *Nyāya* (logic) are necessary for the correct interpretation and understanding of the Veda (as stated by Maṇu in XII 105-106). He is even prepared to concede that systems<sup>1533</sup> like the *Sāṅkhya* (which postulates a prime cause of the world called *Pradhāna*) or *Vedānta* (which postulates *Puruṣa* as the cause of the world), the theory of atoms (propounded by *Kaṇāda*) serve the purpose of explaining the creation and dissolution of the world, lead one to understand how the performance of sacrifices gives rise to the subtle *apūrva* which leads on to heaven and also exemplify how human effort and fate have their own spheres of operation (i. e. without human effort the world is produced and in spite of human effort it may be dissolved). *Kumārila* goes a step further and states that even the Buddhist philosophies of *ajñāna* (cognitions being the only reality), of the non-existence of the soul or of eternal flux arise from the *arthavāda*

1532. तेन सर्वस्मृतीनां प्रयोजनकारिणामाश्रयसिद्धिः । तत्र धर्मार्थकाममोक्षसम्बन्धिष्वेवैवमवश्यम् । धर्मार्थकामविषयं तद्विषयकवहः प्रयोजकमिति विवेकव्यवहारः । सर्वेष्वेवित्यामरणयोः रूपवैयर्थ्यावधानात् ननु । उपपत्त्यनानि स्वार्थवद्भूतान्यवधारयन्ति । — सीमांता तु टीकादेव वचनात्प्रामाण्यमिति चेन्न तस्मैव प्रयोजनव्यवहारो यदुक्तः । न हि कश्चिदपि धर्ममोक्षोपपत्तिं प्रयोजकतापेक्षया सर्वत्र ननु । एतेन व्यापकित्वं व्याचक्षते । तन्मन्त्रार्थिक pp. 166-167.

1533. धार्मिकः प्रधानद्वयवैयर्थ्यमाश्रित्यकारणविवक्षितः स्वमित्यवधारित्वेन वरितास्ताः सर्वे मन्त्रार्थवद्ज्ञानादेव इवममानुषहृत्पुत्रद्वयवृद्धतिविकारभावदर्शनेन च इवञ्चना । उपपत्तिश्च सर्वत्रामाद्यताद्योक्त्यादिकविभागज्ञानम् । सर्वप्रयोजनवर्णनमपि द्वैतपुरुषकारप्रमाणविभागवृत्त्यर्थम् । ... विज्ञानमात्रज्ञानमनुमेयाख्यादिशब्दानामनुपपत्तिवृत्त्यवधारणार्थं विषयवैयर्थ्यादिकं कारणं विवर्तयितुमिच्छुपपत्तिं सर्वेषां प्रामाण्यम् । सर्वत्र च यत्र कालांतरकलापविधानानुपपत्तिरवश्यम् । सान्द्राधिककले तु इभिकविद्यादौ उपपत्त्यर्थं व्यवहारवृत्त्यादेव प्रामाण्यमिति विवेकसिद्धिः । तन्मन्त्रार्थिक p. 168.





should carry a staff of *palūka* (the staff serves for one's protection, which is a seen purpose, but that it should be of *palūka* and of no other tree is based on an unseen motive); (4) when one text declares that *homa* should be performed after sunrise and another declares that it should be performed before sunrise, reasoning requires that there should be an option (vide *Manu* II. 15); (5) when *Manu* declares (in VI. 38) that a *brāhmaṇa* should leave home to become a wandering ascetic he simply re-iterates what is laid down in such Vedic passages as *Br. Up.* III. 5. 1 (*vyūthāyatha bhikṣācāryam curanti*) or *Jābāla Up.* 4.

In I. 3. 5-7 *Jaimini* as interpreted by *Śābara*<sup>1633</sup> deals with the topic of the authoritativeness of certain usages laid down in the *smṛti* in relation to Vedic rites. *Śābara* states: *ṣiṣṭa*<sup>1634</sup> say that religious rites should be performed after sipping water (i. e. after *ācamana*), one should wear the sacred thread in the *upavīta* way in the worship of gods, one should do with the right hand all religious acts. The question is whether these acts should be done if not opposed to the *śruti* or should not be performed if opposed to what is taught in the *Veda*. The *pūrva-pakṣa* view is that these acts should not be done because they run counter to the sequence of the acts laid down in the *Veda*. For example, the *Veda* says, 'after getting ready a bundle (or handful) of *kuśa* grass called *vedi* one should prepare the *vedi* (altar)'. Here the preparation of the *vedi* is declared to follow immediately after the getting ready of a handful of *kuśa*. If after the handful is got ready a man has a sneeze he has according to *Manu* V. 145 and *Vas.* III. 38 to sip water before going on with the preparation of the *vedi*. This would be against the sequence (*krama*) of acts laid down in the *Veda*. Strangely enough Mr. K. L. Sarkar in T. L. L. (on *Mīmāṃsā* rules) translates the words '*vedam krivā vedim karoti*' as 'make the *vedi* and

1633. निष्कम्भोपेक्षिवद्भूमिति चेत् । न साक्षपरिमाणत्वात् । अवि वा कारणान्नान्ये वयुक्तानि यतीवेरन् । जै. I. 3. 5-7 ; आचम्येत कर्तव्यं वज्रोपरिणिता कर्तव्यं दक्षिणाचरोण कर्तव्यमिदं चैव दृष्टव्यानि । उवाहरणानि । विनेषानि भुतिविद्भूतानि न कार्यणानि । एतादिवद्भूतानि कारणाणि चेत्पक्षमिदं तैत्तिरीयवृद्धिपक्षादीनां निषिद्धं कुप्यति तस्माद्विद्भूतानीति । नेतदेवम् । साक्षपरिमाणं हि कर्म यतीवेरन् । यद्यपि वेदं कृत्वा वेदिं कुर्वीतानीति । अतिवृत्तवत्प्रादुर्भूता वेदं वेदिं चादृष्टीयमानमाचमनादि । सधरः । वेदवृद्धिमादितोपायेति वा तस्मात् । ... अवि वा कारणे इदं पक्षमादेव न युक्तं । तस्मान्नाचमनादीनां कर्तव्यमिति वद्भूता # तन्त्र. p. 198. कुमारिल says that the 7th sūtra should end with the words 'वेदवृद्धिमादितोपायेरन्', which may also be taken as part of the 8th sūtra and relies on the maxim of the crow's eye. The words वयुक्तानि यतीवेरन् mean 'निषेधवृद्धिमाचमनादीनादिवेदम्'.



then recite the vedas' (p. 241), thereby committing two mistakes. He misunderstands the word 'veda' which in this passage only means a 'handful of kusa' and inverts the sequence of the acts denoted by the gerundial termination 'tva'. On account of these two mistakes the discussion on pp. 240-242 is misleading and obscure. If a man were to do the things required in a vedic rite with both hands, he would be able to do them quickly. The *smṛti* rule that every religious act should be done with the right hand alone interferes with the quick performance of religious acts. The established conclusion is that these religious acts (such as *ācamana*) are performed by the *śiṣyas*, are prompted by no visible motive (such as covetousness) and are therefore to be looked upon as authoritative, being not opposed to *śruti*. Kumārila does not like this way of explaining the *sūtras*, since the instances given by Śābara really do not deserve to be put forth as even *prima facie* opposed to *Śruti*. The *Tantravārtika* (p. 201) sets out *śruti* passages wherein the wearing of the sacred thread in the *upavīta* form<sup>1636</sup> (Tal. S. II. 5. 11, 1 and Tal. Ār. II. 1), *ācamana* (Tal. Ā. II. 11), are enjoined. Therefore it explains the *sūtras* in a different way. It splits up Jal. I. 3. 5-7 into two *adhikaraṇas*. The first two constitute one topic. The *pūrvapakṣa*<sup>1637</sup> is: those precepts of Buddha and other founders of sects, such as the construction of monasteries and parks, the insistence on destituteness, the practice of meditation, *ahimsā*, truthfulness, restraint of senses, charity and kindness, are such that they are also laid down by the Veda, are not opposed to the ideas of *śiṣyas* or do not run counter to nor rouse those who know the Veda to anger and therefore they must be held to be authoritative. This is denied by saying that the Brauddha doctrines even on the abovesaid matters are not to

1636. Vide H. of Dh. vol. II pp. 257, 258, notes 671, 677 for the passages of Tal. S. and Tal. Ā.

1637. भूयानि तु पूर्वधिकरणस्य परिहारात् पूर्वोक्तैरेव व्याख्यातव्यानि । यस्मिं वेद-  
लिखितं न बाधते शिष्टान् वा वेदविदो न को दधाति विद्यायाश्च सम्बन्धककरणवैराग्य-इत्यान-  
व्यासार्थिना-सम्पन्न-द्वय-दान-दयादि तद्वृत्तादिनापि प्रमाणेनाविच्छिन्ना इति चेत् ।  
न । शास्त्रपरिमाणत्वात् । परिमितान्येष हि चतुर्दशाष्टदश वा विद्याभ्यासानि धर्मभाग-  
त्वेन स्मृतेः परिचरीतानि वेदोपवेदाङ्गोपाङ्गादुपमर्सेदितः पुराणप्राकृतिकादुन्नीति-  
संज्ञकानि, न च तेषां मध्ये बौद्धार्थत्वादिभिर्याः स्तुता पूर्वोक्ता वा । ... तेन ... सम्बन्धक-  
दिनादि अद्वैतनिश्चयशीलवस्तुवर्णनविभक्त्यन्तीषु च तन्मात्रोपलब्धेः मत्तत्वात्प्राप्तं बाधपरि-  
यन्तिधर्मशास्त्रेणो बोधस्यते तत्र दृष्टान्तं भवति । तत्रः pp. 201-203; vide n.  
1630 above.

be accepted as authoritative since only a limited<sup>1638</sup> number (14 or 18) of vidyās (the four vedas, the upavedas, the aṅgas of the veda, the 18 smṛtis, purāṇas, Daṇḍanīti) have been accepted by the vedic śiṣṭas as authoritative on matters of dharma and the works of the Bauddhas and Jainas are not included therein. Just as milk though originally pure becomes useless and unreliable when put into a bag of dog-skin, so the doctrines of Bauddhas such as ahimsā, though based on truth, are useless and are not authoritative in themselves for the followers of the Veda.

The Tantravārtika holds that Jai. I. 3. 7 is an adbikaraṇa by itself and is concerned with the authoritativeness of sadācāra (the customs and usages of śiṣṭas). Its position is that those usages are authoritative that are not opposed to express Vedic texts, that are practised by Vedic śiṣṭas under the belief that they are right conduct (dharma) and for which no visible motive (such as pleasure or the satisfaction of desires or the acquisition of wealth) can be predicated. Śiṣṭas are those who perform the religious acts expressly enjoined by the Veda. They are not so called because they practise what is said to be sadācāra; otherwise there will be an argument in a circle (in the form 'sadācāra means what is practised by śiṣṭas and śiṣṭas are those who practise sadācāra'). The practices traditionally handed down from generation to generation which are observed by śiṣṭas (as stated above) with the idea that they constitute a part of dharma must be regarded as dharma and as leading to heaven.<sup>1639</sup> Practices do not become authoritative by the mere fact that no such motive or purpose can be postulated for them, but they become so only when they are observed by śiṣṭas as

1638. Vide Yāj. I. 3 for the 14 Vidyāsthānas. For the four upavedas which raise the number to 18 vide n. 17 p. 10 above. Acc. to the Nyāyasmṛti (p. 183) Āyurveda, Dharmaveda, Gāndhārvaveda and Arthasastra are four Upavedas; Mīmāṃsā and Nyāya (logic) are two upāṅgas, Śikṣā (not the Vedāṅga on phonetics) is separately mentioned because there are works on phonetics like that of Kātyāyana laying down special rules for distinct śākhās. Daṇḍanīti is the same as Arthasastra.

1639. इष्टकारणहीनानि चानि कर्मणि तावुभिः । वस्तुतानि धर्तविरन् धर्मत्वेनेह तावुभिः ॥ इतरीरिभूतये चानि सुखाय वा प्रयुजते । अथार्थं वा न तेष्वस्ति शिक्षामनेन धर्मधीः ॥ धर्मेनेन वपुजानि किञ्चिदपि न कानिचिद् । वैदिकैः कर्तुमामान्यात्तेषां धर्मत्वमिदमेत ॥ ... नेन तेषां सदाचारमिति वा शिक्षा मता । साक्षाद्विहितकारित्वाप्युक्तं सति तद्वचः ॥ जपकर्मैर्दुहितधर्मैरपि वा हि तत्त्वशिवस्वस्ववद्भा वपरम्परप्राप्तमन्यदापि धर्मैर्द्वेषा कुर्वन्ति तदपि स्वर्गसाधनं कथमेव । तन्वचार्त्तिक pp. 203-6.



part of dharma. The *Tantravārtika* (p. 305) gives certain illustrations of such practices viz gifts, *japa*, *mātrayājña* (offerings to the mother Goddesses), the festival of Indra's banner, fairs held at temples, fasts by maidens on the 4th day of a month, gifts of lamps on the first day of Kārtika, the spring<sup>1640</sup> festival on the first day of the dark half of Phālguna &c. The *Tantravārtika* is careful to point out that many activities such as agriculture, menial service or trade that are the means of securing wealth and pleasures and that give rise to several fixed and varying acts and also such actions as eating sumptuous food, drinking, sleeping on soft beds, possessing a charming house and garden, engaging in painting, singing and dancing, enjoying the fragrance of sandalwood and flowers, all of which are common to *mlecchas* and *Āryas*, are not deemed by any one to be part of dharma and that it does not follow that, because a few actions (of śiṣṭas) are accepted as dharma, all their actions are to be looked upon as dharma.<sup>1641</sup> In ordinary life certain practices only are deemed to be śiṣṭācāra, while there are certain other acts that are common to all human beings (including śiṣṭas), but are not so regarded. Certain practices such as worship of gods and honouring brāhmanas are seen to be common among all people and yet do constitute dharma, because that is deemed to be so by the śiṣṭas. Those practices alone are dharma that are observed by śiṣṭas only as obligatory on them and not other practices that are common to all beings. The *Tantravārtika* then refers to the Dharma-

1640. For the festival called Indramaha, vide II of Dh. vol. II, pp. 825-826. The spring festival was one in which on the first day of the dark half of Phālguna people went about drenching each other in ordinary or coloured water discharged from syringes and the like : 'कातुनकुम्भनयनपदि क्रियमाणः परस्परमलेकः समन्तोत्सवः' मनुस्मृतिका on प्राक्कदीपिका on च. 1. 3. 7. Modern practice combines this with the lighting of bonfires on the Full moon of Phālguna. The mythical origin of होलिका of modern days on the Full moon day of Phālguna is described in भविष्यपुराण (उत्तरपर्व chap. 132).

1641. यानि तु श्रेष्ठद्विषमाचारानि नियतानि पञ्चकिंपाण्डित्यपदेषु शुभमाचनकुपितेषां चातिशयोक्त्यानि दृष्टाव्यापन्नानुशङ्कानामाचारानि च पूर्वोक्तानामेव परीतानुशङ्कानामुपपन्नानि चानि सतिष्ठानि तेषु नैव कस्यचिद्व्यवहारोऽस्तीति न तत्सामान्यतो वदेत्तत्परिणामिकमप्यपि; केचंचिद्वा धर्मस्याप्युपपन्नानि सर्वेपरिणामकानि सन्तु; किं तु देवमाह्वयपूजादि श्रेष्ठमाचनिकिञ्चन; तत्रैवैव धर्मस्य सिद्धाचारमनं हि तत्; तेषां हि काचिदाचारः सिद्धत्वेन निश्चितः; काचिज्जु पापिसामान्यमाचनत्वेऽपि सङ्गतः; अथ वा काचिद्व्यवहारः सिद्धत्वेन निश्चितः; स यत् केचनो धर्मो नेवराः चापिप्राच्यः; अथ, p. 206; ये हि सद्वाचाराः सुप्रसङ्गश्चा क्रियते स धर्मोऽस्तीत्येव प्रतिपद्यते; यस्तु कामकोपलोभमोहभोजादिविहृतो नोपपद्यते स यथाविधिपति-  
येव प्रतिपद्यते; अथवापि च, p. 208.

sūtra<sup>1642</sup> of Gaut. (I. 3) and Āp. Dh. S. (II. 6. 13. 7-8) which say that ancient (or great) men in several instances were guilty of transgressions of dharma and of committing desperate acts, that on account of their spiritual merit they did not incur sin, but if a man of later days were to follow them in the same acts he would sink into hell. It then gives twelve instances of lapses from good conduct (attributed even to *anāsāra*) that were transgressions and either explains them away or says that they were due to wrath, hatred or other passions, were not intended by the authors (of these acts) themselves to be dharma and are not to be looked upon as śiṣṭācāra by modern men. The instances are: (1) Prajāpati who is said to have approached Usas, his daughter (Śat. Br. I. 7. 4. 1 or Alt. Br. 13. 9); (2) Indra, who is described as the paramour of Ahalyā (in the Subrahmaṇya litany); (3) Naliṣa, who occupied the position of Indra, made approaches to Śaci, the wife of Indra (Udyoga, chap. 13 ff) and was transformed into an *najaga* (Boa Constrictor); (4) Vasiṣṭha, who when his 100 sons were devoured by a demon, was so struck with grief that he threw himself bound into the Viprās river (Nirukta IX. 26, Ādiparva chap. 177. 1-5 = cr. ed. 167. 1-5, Vanaparva 130. 8-9, Anuśāsana 3. 12-13); (5) Purūravas who thought of dying by hanging or by being devoured by wolves (Rg. X. 95. 14, Śat. Br. XL. 5. 1-8) when separated from Urvast; (6) Viśvāmitra, who officiated as priest at the sacrifice of Trisanku that had become a cāṇḍāla through a curse (Ādiparva 71. 31-33); (7) Yudhisṭhira who took Draupadi as wife although she had been won by his younger brother Arjuna by his skill in archery and who prevaricated in order to bring about the death of his brāhmaṇa teacher Droṇa (Droṇaparva 190. 55); (8) Kṛṣṇa Dvaipāyana (Vyāsa), who thought himself a perpetual student, procreated by *niyoga* at the request of his mother Satyawati two sons on the widows of his brother Vicitravirya; (9) Bhisma who lived on without belonging to any (of the four) āśramas and who is said to have performed several Āśvamedhas though he had no wife; (10)

1642. इतो धर्मविराजः साहसं च महताम् । अवर्दीर्यवान् । मौ. I. 3-4; इतो ... साहसं च दूर्यवान् । तेषां तेजोविद्वेदेन वयसापी न विद्यते । तद्वर्द्धितं धनुषाणः सीद्ध-  
त्पन्नः । आय. घ. सू. II. 6. 13. 7-9; अमरवपुराण X. (दूर्योध 33, 30) has a verse to the same effect.



Rāma who performed Aśvamedha accompanied by a golden image of Sita; (11) Dārtarāstra, though blind, performed sacrifices; (12) Vāndeava and Arjuna are described as being drunk and as having married Rukmīni and Subhadrā respectively who were their maternal uncle's daughters (such marriages being forbidden). Kumārila, like a modern comparative mythologist, explains (*Tantravārtika* p. 208) that Prajāpati means 'the Sun' who approaches (i. e. rises after) the Dawn. This explanation is as old as the *Āit. Br.* 13. 9 where it is said that there are two views viz. it is either 'Heaven' or 'Ugas' that is meant by the word 'daughter.' Similarly Indra and Ahalyā respectively mean the Sun and the Night and *jāra* means literally 'one who makes to disappear or wither away' (and not paramour) in that passage. Vide H. of Dh. vol. II. p. 1145 note 2550 for the epithet 'Ahalyāyai jāra' in the Veda and quotation from *Tantravārtika*. The story of Ahalyā and Indra varies in its details in the epics. Vide *Rāmāyaṇa* I. 48, *Udyoga* 12. 5. These two are instances of transgression of dharma (*dharma-vyatikrama*) and the next case of Vasiṣṭha is an example of *sāhasa* (through sorrow). Kumārila says that Viśvāmitra was prompted by his hatred of Vasiṣṭha and his pride, that the sin accruing from his act would be neutralized by his great austerities. So his actions cannot serve as a model for imitation by others. Vyāsa, who was a son of Satyawati from Parāśara when she was a maiden, had Viçitravīrya as (his uterine) brother after Satyawati married Santanu. In the case of a brahmacārīn, sexual intercourse is most reprehensible (vide H. of Dh. vol. II. p. 374)<sup>r</sup> But Vyāsa agreed to *niṣoga* because of his regard for his mother, as allowed by *Gaut.* 18. 4-5. Kumārila adds that Vyāsa could do so on account of his great past and future austerities, that another person with similar qualifications may do so even in spite of all prohibitions, since the *Mahābhārata* (*Āśramavāsika* 30. 24) says 'sarvaṃ balavatām pathyam' (to the strong everything is wholesome or allowable). He gives an apt illustration. An elephant can devour branches of trees without harm, but others doing so would meet death. Dakṣa V.10 prescribes 'anāśrami na tiṣṭheta kṣanamekamapi dvijaḥ' (a twice-born person should not stay even for a moment unattached to some āśrama). Bhīṣma remained unmarried out of filial devotion to his father and Rāma could not think of another wife as he was so much attached to Sita. Kumārila boldly asserts that Bhīṣma had a wife only for the purpose of the sacrifices he performed (though this is mentioned in no *Itihāsa* or *Purāṇa*) and relies upon the

mode of proof called *orthāpatti* for this<sup>1643</sup>. His words are given below. This and some other explanations offered by Kumārila shed a very interesting light on the theological apologetics of Mīmāṃsakas. Vide H. of Dh. vol. II. pp. 558 and 684 for Rāma and the golden image of Sita. As to Yudhiṣṭhira's bringing about the death of his brāhmaṇa teacher the explanation is that the former performed *Aśvamedha* after the end of the war by way of *prāyaścitta* (vide H. of Dh. vol. II. p. 147 n. 333 and pp. 1236-37 notes 2674-75 for *Aśvamedha* as the remover of all sins). As to Draupadī being the wife of five brothers Kumārila quotes *Ādiparva* 198. 14 (= cr. ed. 190. 14) and offers several explanations (p. 209), the most astounding being that there were five wives of the five brothers who were so similar that they were all referred to as one. As the *Nyāyasūdhā* (p. 194) remarks, these various explanations were offered to show off great resourcefulness of interpretation (*parihāra-valbhavartham*), the proper one being that the practice of the *Pāṇḍavas* was an evil one and was not to be imitated. A blind man could not perform sacrifices and was excluded from inheritance. Vide H. of Dh. vol. II. p. 157 n. 369 and vol. III. p. 609 n. 1154. But Kumārila says that as Dhṛtarāṣṭra was blessed with sight for a while and saw his deceased sons through the miraculous power of Vyāsa (*Āśramavāśīparva* chap. 32-37) he might have been endowed with sight at the time of the sacrifices or what is meant is that he made gifts which are spoken of as sacrifices. As regards Subhadrā, Kumārila asserts that in spite of the fact that Subhadrā was said in the *Ādiparva* (219. 18 = cr. ed. 211. 18) to have been the daughter of Vasudeva and sister of Kṛṣṇa, she was really the daughter of Kṛṣṇa's step-mother's sister or the daughter's daughter of the sister of his step-mother's father (a female cousin being often called a sister among the *Līṭas*). Vide H. of Dh. vol. II. pp. 459-460 and notes to my edition of the text of V. Mayākha (pp. 200-202). Kṛṣṇa's marriage with Rukmiṇī is to be similarly explained. It is somewhat surpris-

1643. श्लोकादिभिर्बलवत्तद्विज्ञानार्थादुद्दिष्टेनार्थान्वयस्यैव धर्मोपपत्तिकः । इत्युपाय-  
नयेन बलपूर्वेणागत्युद्गुणधर्मचरणं साधयम् । व्याससूत्रा p. 155 ; ब्रह्मणामेक ... मयुरजविंश  
(मनु १. १८१) — इत्येवं विनिवर्तयितुं बलवत्तद्विज्ञानार्थादुद्दिष्टेनार्थान्वयस्यैव धर्मोपपत्तिकः । केतव्यज्ञानार्थान्वयस्यैव  
आसीद्विज्ञानार्थादुद्गुणधर्मचरणं साधयम् । नो वा विन्दे विदुः शार्ङ्गं विज्ञातेति न दृशत । आकाश-  
विक्रमार्थान्वयस्यैव धर्मोपपत्तिकः । कथम् ? अथवा बहुवचनं वा ? बहुवचनं इत्येव  
एकत्वेनोपपत्तिः इति व्यवहारार्थादुद्दिष्टेनार्थान्वयस्यैव धर्मोपपत्तिकः । कथम् ? p. 209 ; एवमुक्तं ननु बलवत्तद्विज्ञानार्थादुद्दिष्टेनार्थान्वयस्यैव  
धर्मोपपत्तिकः । परिज्ञापेति सुभद्रायां बहुवचनव्यापस्यैव धर्मोपपत्तिकः । कथम् ? इत्युद्गुणधर्मचरणं साधयम् । मीमांसको.  
p. 48 ; but in the *Ādiparva* 219. 18 Subhadrā is expressly stated to be the  
daughter of Vasudeva 'दुहिता वसुदेवस्य वासुदेवस्य च स्वसा'.



ing that Khapadeva states that it is nowhere found that Subhadra was the daughter of Vasudeva. Probably he had a corrupt reading of the Mahābhārata passage before him. As to the charge of drinking spirituous liquor (*ubhan madhūka-vakṣhaṇa* in Udyogaparva 59. 5) against both Vasudeva and Arjuna, they were both ksatriyas and only brāhmanas were prohibited from drinking any kind of intoxicating drink (Gaut. II. 25), while to ksatriyas and vaiśyas two kinds of wine called madhu (liquor from honey or madhuka flowers) and sidhu (rum) were allowed and only paṇṣṭi (spirituous liquor distilled from flour) was forbidden (by Gaut. II. 25, Manu XI. 93-94).

Kumārila offers some other explanations of Jai.<sup>1644</sup> I. 3. 5-7 which need not be set out here.

Kumārila mentions certain practices of his times and concludes that they are to be condemned and not to be followed or regarded as authoritative. He says:<sup>1645</sup> even in these days brāhmana women of Ahicchatra and Mathura drink wine; northerners (northern brāhmanas) engage in such transactions as the gift and sale of horses and mules that have a mane, asses,

1644. जै. I. 3. 7. will have to be read as 'अवि वा कारणादपि प्रवृत्तानि पक्षीपेक्ष तेषां दर्शनादितोपरः' acc. to Kumārila, Khapadeva and others if Sabara's interpretation of the sūtra is to be accepted. 'तेषु आचमनादिषु कृतादिविरोधस्यादर्शनादर्थद्विकल्पोत्पत्त्यापान्नकारणस्याग्रहणे सिद्धेः प्रवृत्तानि आचमनादीनि व्याजलेन पक्षीपेक्षितेन युक्तैः । तन् मातृकारणविरुद्धत्वात् उपरहितः ।' योग्यभाष्येण on I. 3. 7 p. 36. Kumārila implies a pūrvaśloka and holds that I. 3. 7 is the sūtra giving the final conclusion only and as an independent sūtrikaraga by itself.

1645. अयमेव चिच्छत्रमधुरागिनासिनाङ्गुलीनां सुरागानम् । केनर्पवाचतस्त्रो-  
द्वाचमद्वहाननिष्ठमिकम्पवहारभाषीपक्षितसहभोजनार्थदीप्यानाम् । मातृलुप्तलुप्ताना-  
मन्वीर्यभोजनार्थानि दाक्षिणात्यानाम् । मित्रजननोच्छिद्यस्तुभोजनं सर्वेण परपरस्त्वना-  
मृदावृत्तवृत्तमानताचमन-निर्णयकधीतार्थमात्रवत्परिधान-व्याहरवातिरिक्तगृहागत-  
कार्यपरितरणादीन्मुपेयाम् । अविप्रवृत्तानि पक्षीपेक्षजानि कुलपरिधायकसम्पत्तय-  
विजयानि लभ्यतेभूयानि सर्वविधानहेतुदर्शनानि च प्रायेण संभवतीति केनार्थक-  
मित्रसत्वाकारणमेवाचमनसम्भवः । मन्त्र. p. 204. अहिच्छत्र is modern Ramnagar  
in Rohilkhand. Vide JRAS. for 1903 p. 292. The form अहिच्छत्रा  
occurs in a Fakhra inscription (E. I. vol. II. at p. 243). For the  
different views about मातृलुप्तानामपेयमन vide H. of Dh. vol. II. pp.  
455-463. Kullūka on Manu XI. 95 notes that certain commentators held that the prohibitions against drinking in the case of brāhmanas did  
not apply to brāhmana women. Vide H. of Dh. vol. II. p. 765 for सहभोजन  
with wife and children and pp. 181 and 839 about gift and sale of horses  
and animals with two rows of teeth, where Tai. S. II. 2. 6. 3 and II.  
3. 12. 1. and Jai. III. 1. 26-31 are cited.

camels and animals with two rows of teeth and eat from the same plate with their wives, children and friends; brāhmanas of the south enter into matrimony with the maternal uncle's daughter and take their meals while seated on a couch (of wicker work); both (brāhmanas of the north and south) take cooked food (kept in pots) that remains after their friends or relatives have partaken of it or that has been touched by them (at the time of eating); they chew betelnut leaves that have been touched by persons of all varṇas, do not perform sipping of water (*ūcamana*) at the end of the chewing of betelnut, wear clothes washed by washermen and brought on the back of asses; they do not avoid contact even with persons guilty of grave sins (except of brāhmaṇa murder). These are everywhere an infinite number of very obvious transgressions of the subtle dictates of dharma laid down for each man, caste or family, that (transgressions) are contrary to śruti, smṛti and each other and that have a visible purpose behind them. It is not possible to regard such practices as authoritative.\* Similarly Varadarāja, (1600-1660 A. D.) a pupil of Bhaṭṭojī Dikṣita, in his work styled the *Gīrvānapadamañjarī* in a dialogue between a Kānyakubja brāhmaṇa and a *munyāṣin* hailing from Vijayanagara makes the brāhmaṇa host say that each country has certain practices which are *durācāras* such as marrying a maternal uncle's daughter in the south, marriage of girls among southerners even before they are four years old, sitting down to a meal without bathing in Karpātaka, in Mahārāṣṭra the marriage of a younger brother before an elder one. In the hilly country the practice of *niyoga* (vide Mr. P. K. Gode's interesting paper in 'Bhāratīya-vidyā' vol. VI pp. 27-30).

According to Śābara, Jaimini in I. 3. 8-9 deals with certain words like *yava*, *varāha* and *vetasi*, that have different significances among Āryas and Mlecchas (and therefore these sūtras constitute what is called *yavavarāhadhikaraṇa*). But Kumārila does not like this view of Śābara and proposes another tope for these two sūtras, viz. the relative strength of smṛti and *śāstra* where they are in conflict. Here there are three<sup>1646</sup> possible

1646. हेमाचारकलौक्यस्य समस्त वेद पुत्रवत् । स्मृतीनां वा बलीयस्तं आचार्या वेति कथ्यते ॥ इत्येवं श्रुतिमूलकं न स्मृत्याचार्योः समम् । समावयवधीमा हि स्मृतिः सोऽपि-  
कथ्यता ॥ तथा श्रुत्यनुमानं हि निर्विषयमुपायते । आचार्यास्तु स्मृतिं ज्ञात्वा श्रुतिविज्ञापते ततः ॥  
हेन इत्यन्तरितं तस्य सामान्यं विप्रकृतम् । ... हेमाचारः स्मृतिं पापदुष्कृतां नवतेति ।  
स्मृतिर्विषयश्रुतिस्माद्वर्तमानाचार्ये ॥ तस्मादाचार्योऽपि स्मृतिर्विषयी सन्निकथ्यतेति ।  
तत्र, pp. 220-221.



views, viz. that both are equally strong and so there is an option in case of conflict, that *śāstra* is stronger, that *smṛti* is the stronger of the two. The *prima facie* view is that both are equally strong, since *smṛti* and *śāstra* are both inferred to be based upon Veda. Kumārila's own final conclusion is that *smṛti* is of greater force than *śāstra*, that is, where they come in direct conflict *smṛti* should prevail. His position is that, though both *smṛti* and *śāstra* are to be deemed to be based on Veda, there is a difference between the two. People have full faith in such *smṛtis* as that of Manu and Manu and others are believed to have been inspired sages and are the propounders of the rules of dharma scattered about in various Vedic śākhās, while the same cannot be said about modern men and their practices cannot claim or possess the same weight and allegiance that the practices laid down by Manu and other sages can. From the practice of *śiṣtas* one may infer a *smṛti* as the root thereof and then further one may infer a *śruti* as the root of the *smṛti*. Therefore *śāstra* is removed by two stages from the Veda, while *smṛti* is removed only by one stage from the Veda. Hence Kumārila says that in case of conflict *smṛti* should prevail over *śāstra*. The practices that are discussed here (acc. to Kumārila, Pārthasārathi and others) are such as the marriage with a maternal uncle's daughter or with a paternal aunt's daughter and the like that are in vogue among certain people and that are yet opposed to *smṛtis* (such as Manu XI. 171-72) and for which a visible motive can easily be found (*kūṃḍalīhetumārāṣa spṛṣṭamau drāṣṭe*, as the Śāstradīpikā says).

Kumārila gives another (and so a third) explanation of Jal. I. 3. 8-9<sup>1447</sup> which need not detain us here.

1447. समा विनिर्दिष्टः दद्यात् । शस्त्रभा वा तद्धिमित्तत्वाद् । जे. I. 3. 8-9. Acc. to कुमारिल here शस्त्र means स्मृति, while acc. to Sabara's gloss शस्त्रभा means शिष्या. Sir G. Jha in 'Pūrvaśikṣā in its sources' p. 226 translates 'giving and accepting in gift and buying and selling lions, horses'. केसरिन means 'a lion' also, but it is hardly possible to believe that gifts of lions were made to brāhmanas or that they accepted them. केसरि must be taken as an adjective of 'śāstra' here. The शस्त्रदीपिका on III. 4. 14 remarks, तेन यत्त द्योपलभेति । लौकिके वाच्यदाने न केसरिणो दद्यादिति प्रतिषेधाद् द्योपलभेति वेदिके तु कर्माहुदाने विशेषविधानात्तत्प्रतिषेधाद् द्योपलभेति द्योपः. This shows that the prohibition against the gift of 'keśarin' refers to the gift of horses. Sabara on Jal. VI. 7. 4 makes this quite clear when he says that in the Vātsāyī where the sacrificer had to make a gift of all his wealth, horses

Jai I. 3. 15-23 constitute what is called Holākādhikarāṇa, or Sāmsnyasrutikalpanādhikarāṇa. The first two and the last two sūtras are the most important. Certain practices<sup>1648</sup> like the Holāka (spring) festival are observed by the easterners, certain others like Ahinadaka (worship of growing Karañja or Arka or other trees as handed down in one's family) by the southerners, and the Udvābhayañña (honouring oxen on the Full Moon of Jyestha and making them run a race) by the northerners. The question is: whether, in making an inference about these practices being based on Veda, one was to suppose that the inferred Vedic text also should be restricted to the easterners and the like<sup>1649</sup>. The pūrvapakṣa view is that the śruti to be inferred as the basis of the respective practices must be deemed to be restricted to certain persons only (such as the easterners i. e. *prācya* &c.). The established conclusion is that

(Continued from the last page)

should not be gifted on account of the prohibition contained in 'he does not give *keśarin*': एष हि विप्रसंभ्रानामरंघ्यो ज्ञेयस्यो यदेवं दानं प्रतिषिध्यते न केसरिणो दद्याति गोमयतोदकं मत्तिसृष्टातीति निवृत्तिरपि समान्तावत्. The Mīmāṃsāka, (pp. 60-61) explains the sūtra: 'अथवाचर एव यत्नवान् ... तदनुष्ठीकरणे तु परं समा विप्रतिपत्तिः भवेत् न तु स्मृतिवाचकमिति सूत्रार्थः । निदान्तस्तु स्मृतिशास्त्ररचय प्रतिपत्तिर्नीयसी' , on तद्विनिश्चयान् the व्यासमुखा observes 'तद्विनिश्चयत्वादिति शास्त्रात्मनामप्येन बहुवचनान्न वेदादकं ज्ञातं तच्छब्देन पराहुरप्य सुविमूल्यं हेतुवत्पक्षे तच्छोभयोः स्मृतिप्रतिकरणे ज्ञातं विरोधे पुनरुक्त्यमानमाचार्याणां स्मृतिमूलत्वापरिग्रहाय' । (p. 212).

1648. अनुमानस्य संप्रधानाचारसंयुक्तं ज्ञानं स्यात् । अपि वा सर्वधर्मः स्वातन्त्र्यापत्त्या विधानस्य । ... कर्तव्यमो वा प्रपञ्चः । तद्वै तु कर्तुं धर्मैः । जै. I. 3. 15-23 ; अनुमानात् स्मृतेराचार्याणां च सामान्यनियमते । येनैव हेतुना ते ज्ञानं तेनैव व्यवस्थिताः सामान्यदर्शिताः । तस्मात् होलाकादयः धर्मैरेव कर्तव्याः, आहूनिदुकादयो द्वाक्षिणादरेव, उद्वाभयनञ्चादय उद्वाभैरेव । ... अपि चेति यज्ञस्याहुतिः । एवेकातीचकः सर्वधर्मः स्यात् । कुतः सत्त्वापत्त्या विधानस्य । विधीयतेनेनेति विधानं ज्ञम् । सोऽनुमीयते स्मृत्या । ... तस्मात्सर्वधर्मता विप्रसंभ्रैरपि । जगद्, the word अनुमान means *śiṣya* or अनुमापक or कल्पक. The first two sūtras may be briefly but closely paraphrased as 'अनुमानस्य कल्पकस्य व्यवस्थितत्वात् सामान्यमूलधर्माः स्मृतिः व्यवस्थापकोपपदसंयुक्ताः स्यात् । न व्यवस्थितमूलधर्मं भवितुमर्हति, अपि तु सर्वधर्मः स्यात् । मूलधर्मे विधानेनैव धर्मैः सर्वधर्मोपपत्तकस्य स्वापत्त्य सत्त्वात्' । Mīmāṃsāka, pp. 100-101. This अधिकरण is called होलाका because the first example in शास्त्रभाष्य refers to the practice of होलाका. मेधा, on सत्तु VIII. 46 refers to उद्वाभयनञ्ज as a practice of the northerners. The जै. व्या. सा. explains: 'वसन्तोत्सवो होलाका । स्वस्वकुलान्तं परज्याकीर्तिद्वाराद्वेष्टनादिकमाहूनिमेव कञ्चिदेतेष्वेते । उपेक्षमानस्य धर्मोन्मादयो वतीवर्द्धनस्य च धर्ममिति साधयद्वयप्रपञ्चः ।'

1649. Vide the following remark about the demand for the divine origin of laws and usages from Barolsheimer: "historically political power, legal regulation and customs were popularly conceived as expressions of the Divine Will" [Author's Preface, p. XLIV, in 'the World's Legal Philosophy'].



such practices must be deemed to be meant for all, since the general rule about vedic injunctions is that they are applicable to all. The performer specially meant by each Vedic injunction is known in either of three ways,<sup>1650</sup> viz. by capability, by non-prohibition and by the employment of a special epithet or attribute. When it is said '*svargakāmo yajeta*' then only the three twice-born classes are meant, for, they alone are capable of tending the sacred fires and of possessing Vedic learning and a śūdra is not a fit person to whom that injunction can apply. Those who are guilty of grave sins (*paṭita*) and the impotent are prohibited from performing Vedic rites. When the Veda says '*rājā rājasūyena yajeta*' there is a special attribute of the performer (viz. being a kṣatriya) prescribed by the śruti and so no one else can perform Rājasūya. When none of these three exists a Vedic *vidhi* is in general meant for all (*sarvadharma*). The practices of Holāka, Vṛabhayajña and the like should not be held to be restricted to certain countries or people only, but should be inferred to be applicable to all. When a man leaves the east and goes to the south, he may still perform the Holāka festival; while a man from the eastern country itself may not perform it at all. Further the words 'southern, eastern and northern' are relative. A country that is called southern may be to the north of another. Therefore Holāka and other practices are not invariably concomitant with particular countries or peoples. Nor can it be said that these practices require those particular countries for their performance in the way in which śruti expressly requires the Vaiśvadeva rite (one of the four *cāturmāsya*) to be performed on a spot that slopes towards the east. The *Tantravārtika*<sup>1651</sup> points out that persons receive appellations from names of countries on various grounds as being born in a country or as residing therein or as coming from that country or as going to that country. *Medhātithi* on *Manu* VIII, 46 says the same.

1650. विधौ ज्ञाते कर्ता विज्ञेयेन प्रतिक्रियम् । गोपत्याग्निविद्वत्तिसोपपदान्त्रयैः ॥  
सूत्र. p. 243 : यस्माच्छब्दकामादि दुर्बलं विद्यायकसाम्यमधिक्येति नातिरिक्तं लिख्यजनपदेकते  
समासस्य सर्वविधप्रतिविधौ व्यापकत्वार्थः । न्यायशुभा p. 246 (explaining तस्यापत्यात्  
विधानस्य).

1651. सर्वव्येष्टेषु विद्वत्समाख्या हि प्रकृतेः । निवास-सर्व-जातस्य-तदायमन्वेतुभिः ॥  
सूत्र. p. 251. The last half refers to Pāṇini IV, 3. 89, IV, 3. 33, IV, 3. 23, IV, 3. 74 respectively : न्यायविद्वत्समाख्यापि अपरिचरिणी गृहसमाख्यानमपि  
कस्यापि द्वाचाचार्यात् । विद्वत्सिन्धुतदुर्बलवादीनां चासाम्यामपि समासवाचानाचार्यात् ।  
न्यायशुभाति विज्ञेये सर्वव्येष्टसमाचार्याणां स्मृतीनां चेति सिद्धम् । ज्ञातदीपिका (at end  
of Jal, I, 3. 23).

The *Tantravārtika* explains that the first two sūtras are meant to refer to another question also, viz. whether the rules of the gṛhyasūtras<sup>1032</sup> and of such dharmasūtra works as the sūtra of Gautama are authoritative only as to certain groups or are meant to be authoritative for all. He begins by saying that the Purāṇas, the Manusmṛti and Itihāsa (i.e. the Mahābhārata) are equally authoritative for all people and then points out that the Gobhila-gṛhya and Gautama-dharmasūtra are traditionally accepted by the students of the Sāmaveda, that the dharmasūtra of Vasīṣṭha is accepted by the students of the Rgveda, the sūtra of Śaṅkha-Likhita by the followers of the white Yajurveda and the sūtras of Āpastamba and Baudhāyana by the followers of the Taittiriya Śākhā. The *Śāstradīpikā* explains that an author who was a student of the Sāmaveda taught his own work to his pupils who also learned the Sāmaveda under him, that these pupils in their turn taught that work to others and in that way there arose a tradition among the students of the Sāmaveda to study the sūtra of Gautama. Therefore, to say even as to gṛhya works that they are restricted to particular groups of persons is not correct. Similarly in the case of practices there is no epithet or attribute that is common to all those who practise them or which distinguishes those who do not observe them from those that observe them and therefore it is not possible to restrict such practices as Holāka to particular countries or groups of people.

The requisites of valid customs as laid down by the eminent writers of the Pūrva-mīmāṃsā school may now be summarised. Such customs must be ancient, must not be opposed to the express texts of the Veda or of smṛti, must be such as to be regarded as obligatory by the śiṣyas and must be observed

1032. देशधर्माद्व्याहृत्य संप्रत्यक्षविचार्यते । किं स्वपरिग्रहमूलकं किं वैश्वं सर्वधर्मा ॥  
... आद्यं ब्रह्मद्वये वाच्यदिनपञ्चमं चिन्तयताम् । दृष्टमीतमसुखादिभ्यस्तथासर्वगामिति ॥ दृष्टायमा-  
नवेतिहासम्यतिरिक्तमीतमसिद्धशङ्कतिजिज्ञासारीतादस्तन्मनोधापनादिनवीतयमेवास्त्राणां दृष्टा-  
न्यधर्माश्च प्रतिशास्त्रपक्षप्रत्ययतिष्ठन्ते पाठमन्वयोपलभ्यते । तद्यथा । यौतमसोभिलीये  
छन्दोभिरथ परिपूर्वते । यस्मिन् बहुवचरेण शङ्कानिर्विकीर्णं च वाच्यमितिभिः । आपस्तम्बीय-  
बौधायनीये तैत्तिरीयेण प्रतिपक्षे । इत्येवं तत्र तत्र दृष्टमन्वयाभ्युपगमादि दृष्टोपिथा विचार-  
यितव्यम् । किं तानि तेषामेव ज्ञायमानि, तत्र कर्तव्यानि सर्वेषामिति । तन्त्र. pp. 243-244 ;  
कथां हि छन्दोगः स्वशिष्याभ्युद्धोमान् स्वद्वन्द्वमन्वयपामास तेषाम्पाठ्यद्वेनानित्येवं  
मीतमीतय छन्दोगे पाठः । तथापस्तम्बद्वन्द्वय तैत्तिरीयेरेवं दृष्टमन्वयासम्भोति स्वपरिग्रह-  
धर्मनिवृत्तमन्वयमायकम् । आचार्याणां तु सर्वाचारिभ्युपगमाचारितुल्यं च स्वावृत्तमाकृति-  
भक्तिगुणसंरधानादिकं न किञ्चिद्विशेषं संभवति बहुपादान् होलाकाद्यधिकारं विनिष्पात् ।  
शास्त्रदीपिका p. 42.



by them with the consciousness that they are so, they must not have a seen or visible purpose, and they must not be immoral<sup>1653</sup>. It has to be remembered that the *pūrvamīmāṃsā* writers did not lay down anything about the binding character of usages that were peculiarly secular but restricted their remarks to customs and usages that had more or less an unseen or spiritual purpose. Khaṇḍadeva emphasizes this by stating 'only those customs can be deemed to be based on the Veda that are not opposed to the Veda and *smṛti* and that are observed by respectable people under the belief that thereby they are carrying what dharma dictates'<sup>1654</sup>. Medhātithi on *Manu*<sup>1655</sup> II. 18 makes this position quite clear after quoting a verse of Kumārila 'a *smṛti* that is opposed to the Veda or is self-contradictory, or has a visible secular purpose or expressly states a motive (for observing its precepts) cannot be deemed to be based on the Veda'. The *Mīmāṃsā-kaustubha* (p. 51 on Jai. I. 3. 7) quotes a verse to the effect that 'only those whose ancestors also observed certain usages handed down from generation to generation would not incur blame by observing them (if they are opposed to *śruti* or *smṛti*), but not others (who

1653. वस्तु अदिच्छन्नाद्याणीनां कुरापानं दाक्षिण्यत्वात् न च मनुलक्षणापरिणयादि मय केचिदेषां परिहरन्ति 'येषां परम्पराभावात् पूर्वैरेव्यक्तहितैः । त एव तेन दुर्येवुराचारैर्नैतरे जनाः । इत्यापराधम्बन्धनात्, 'येनारय पित्रो ... दुर्ययति' इति मनुवचनाच्च देवावरवस्वया स्मृत्याचारयोः सामान्यम् । अतश्च परितन्त्र देशे य आचारः पारम्पर्यक्रमगतः अतस्तदुक्तदेश- विषयेषु तन्निषेधस्मृतिरिति न निरोध इति । तत्र ... अपस्तम्बवचनं तु महागिराकरणप्रसवाभ्यासवेपं मनुवचनं तु सती मार्गमिति विशेषणाद्विरुद्धाचारपरिभासयेवमिति न विरोधः । अतश्चादिच्छन्नाद्याणीनां कुरापानादेरनाचारमतेव । जी. को. p. 51 (on जै. I. 3. 7).

1654. स्मृतिस्मृत्यविरुद्धानां शिरोर्मन्त्रवृत्तयामुदीपनानामनामाचाराणां वेदमूलकत्वम् । अत्र यत्र स्मृतौ 'स्मृतिस्मृत्यविरुद्धो यः स सदाचार उच्यते' इत्युक्तम् । वातिके तु आपांशानि- मित्तिसिद्धयपीत्यनेन सदाचारलोपलक्षणम् । अतश्च तत्रैव स्मृतिकल्पनमिष्टमुक्तम् । वस्तुमस्तु आपांशानामनामनामाचाराणां स्मृतिस्मृत्यविरुद्धेऽप्याद्याचारत्वेन सदाचारोपलक्षणत्वं न युक्तम् । अतश्चाचाराणामपि स्मृतिमूलकत्वात्मानाणोपपत्तिः । मीमांसाकोस्तुभ pp. 43-44 (on जै. I. 3. 7).

1655. न च ब्रह्मकाण्ययोः स्मृत्याचारयोः सामान्यम् । उक्तं च महापादैः । विरुद्धा च निगीता च इदार्थाद्विरुद्धकारणे । स्मृतिर्न स्मृतिमुदा स्थाप्या चेत्ता संभवत्युतिः । मेधा. on मनु II. 18. This verse refers to five classes of *smṛti* texts that cannot be based on *śruti*. इदार्थाच्च आदिहकारणा च इदार्थाद्विरुद्धकारणे (स्मृती) : या च एता संभवत्युतिः is the fifth class, but the meaning is not clear. Sir Ganganath Jha in his translation of Medhātithi does not say whence this verse is taken, nor does he correctly render the words निगीता and इदार्थाद्विरुद्धकारणे and he omits altogether the fourth pāda. The words या चेता संभवत्युतिः appear to mean 'that *smṛti* which declares its promulgation (by a sage) is not to be deemed to be based on Veda (since otherwise Veda will be held to be not *utīya*)'.

cannot rely on such a state of things)'. In a learned discussion on *bādhas* Kumārila in his *Tantravārtika* (on Jal. III. 3. 14 pp. 859-860) brings together many *bādhas* out of which those that are relevant to this discussion are given in the note below<sup>1656</sup>. It says that inference is set aside by direct perception, *smṛti* by *śruti*, a *smṛti* not composed by an authoritative person and that is self-contradictory is set aside by a *smṛti* that is authoritative and not self-contradictory, a *smṛti* that has a visible worldly purpose by one that has an unseen spiritual purpose, a *smṛti* based on inference drawn from a *śruti* or based upon a commendatory vedic passage is set aside by a *smṛti* based upon (a direct) *śruti* text, a usage is set aside by a *smṛti* and one usage is set aside by another usage that is accepted by more respectable people &c.

1656. अथ यत्तत्र तत्रोच्यते इदमेतत् बोध्यते (अथर) — दत्तश्रियाभुयाने ... सुत्या स्मृतिः, आत्मविनीतस्मृत्या अनात्मविनीतास्मृतिः, अदृष्टार्थया दृष्टार्थः, सुविप्रमनया लिङ्गाद्विप्रम-  
नार्थयाव्यप्रमया च, स्मृत्याप्याचारः, सोऽप्यभिप्रेक्यराचारेण सन्निवृत्तमसौविद्येन, &c. तन्त्र-  
वार्तिक pp. 859-860.



## CUSTOMS AND DHARMAŚĀSTRA WORKS

1660. शेषविषयाणि लोकोत्तरोद्गम्यः । बौ. प. सू. I. 5. 19.

gr. I. 4. 6) refer to the practices of people that should be followed in such matters as commencing agricultural operations, holidays &c. It is needless to set out these in detail here. *Manu*<sup>1651</sup> IV. 178 pronounces the general prescription for all men, 'one should walk in the path of good men which their fathers and grandfathers trod; by so doing one will come to no harm'. For ordinary men this procedure is easy to understand and to follow. This dictum sets a premium on the attitude of no change in any matter for fear that change may lead to some unexpected harm and has been throughout the ages up to the present the motto of most people in India. As *ācāra* or *sādācāra* is tangible and requires no effort to decide between conflicting views, we find eulogies of it in the earliest *smṛtis* and *purāṇas*. Vide *Manu* IV. 155-158, *Vas.* VI. 6-8 (the first and last of which are the same as *Manu* IV. 157-158), *Amuśāsanaparva* 104. 6-9, *Viṣṇu Dh.* 8. 71. 90-92 (which are almost the same as *Manu* IV. 155, 156, 158), *Mārkaṇḍeya* chap. 34, *Brahmapurāṇa* 121. 6-9, *Viṣṇu-purāṇa* III. chapters 11-13, *Kūrmapurāṇa* (uttarārḍha, chap. 15).

The general rule about the binding character of customs is set out as follows. *Gaut.* (XI. 20) observes,<sup>1652</sup> 'the dharmae (customs) of countries, castes and families, which are not opposed to the Vedic scriptures, are authoritative and binding'. *Gaut.* provides in the next two sūtras that cultivators, traders, herdsmen, money-lenders and artisans can lay down conventions or usages that would be binding on the respective classes, that when a dispute arises as to these usages the king should learn affairs from those who wield authority over those classes and decide the disputes accordingly. *Vas.* I. 17 states, 'Manu has declared that the (peculiar) customs of countries, castes and families may be followed in the absence of rules propounded by the Veda', and in XIX. 7 prescribes that the king should

1651. वेतास्व वितरो यथा येन वाक्ये विवर्जिताः । तेन वाच्यमसौ मार्गो तेन बन्धकस्तिष्ठति ॥ मनु. IV. 178. The *तरुचरित* p. 311 (on lat. I. 3. 7) quotes this, reads वृत्तति for तिष्ठति and remarks 'वेता तु वा विवर्जितिरित्यर्थो वाच्यः । स्मृत्यन्तरातिनिवृत्त्यर्थे न तं वदितुमर्हति.' मेघ. very aptly explains, अनिदृशं मूलमज्ञानादप्यवेक्ष्यमिति । ... यदि विदुषितामहादिभिः कैश्चिदर्थचिदर्थमन्वाचरितपूर्वैः स न अन्वयणीय इति सतो मार्गमित्याहुः । Vide also *मिता.* on वा. I. 224 where मनु IV. 178 is quoted and H. of Dh. vol. II. p. 460 n. 1086 where मेघ. on मनु II. 12 is quoted.

1652. वेदज्ञानिकुलधर्मोऽध्यात्मापराविद्वद्भाः पनायन् । कर्षकशिल्पकृष्यपातकुसीचिकारका वदे स्वे वर्गे । तेष्वपि यथाधिकारमर्थान्तरपरवृत्त्यर्थमन्वयकाः । हो. XI. 20-22. वेदधर्मज्ञानिकुलधर्मोऽध्यात्मनादवर्जितस्तुः । वसिष्ठ I. 17



enforce these among the four varṇas. Āp. Dh. S. II. 6. 15. 1 appears to lay down that the customs of countries and families (if not opposed to Veda) are authoritative and are to be followed in the respective countries or families. But this view seems to be unacceptable to Baudh. Dh. S. (I. 1. 19-26) which says,<sup>1663</sup> 'there is difference of opinion regarding five (practices) in the South as well as in the North. We shall explain those peculiar to the south. They are: to eat in the company of (in the same plate with) one whose upanayana is not performed, to eat in the company of one's wife, to partake of stale food, to marry the daughter of a maternal uncle or of a paternal aunt. Now (the customs peculiar) to the north are: to sell wool, to drink rum, to deal in the sale of animals with an upper and a lower row of teeth, to follow the profession of arms and to travel by sea. He who follows (these practices) in any other country than where they are generally in vogue commits sin. For, in respect of these customs the authoritativeness must be restricted to the respective countries. Gautama declares that this is false. And one should not approve of (accept) either (of the two sets of practices), because they are opposed to the tradition of śiṣṭas (or opposed to the smṛtis and the views of śiṣṭas)'. The *Tantravārtika*<sup>1664</sup> (p. 211) mentions the argument of some concerning these passages of Āp. and Baudh. viz. that Āpastamba's very general statement that practices of countries and families are authoritative in the respective countries cannot be accepted

1663. पञ्चषा विस्तिष्ठचिद्विज्ञितस्तथोक्तम् । यानि दक्षिणतस्तानि स्यान्वाचार्यमः पञ्चदशपुत्रेण सह भोजनं विना सह भोजनं धर्मपितृभोजनं महापुत्रपुत्रपुत्रपुत्रपुत्रमनिति अयोध्या जनाधिक्यः संयुधान्मुद्रितोद्विष्येवत आधुनीयत्वं नमुद्रितवानामिति । इतर-दितरिभ्यः कुर्वन् कुप्यतीतरदितरिभ्यः । तत्र तत्र देशप्रमाणमेव स्यात् । निवृत्तिद्विषि गौतमः । तमेव चैव नद्विषेत् शिष्यस्त्वितिरोपद्रुतात् । वा. प. सू. I. 1. 19-26. The *स्मृतिच.* I, p. 19 explains: इतरि दाक्षिणायाः इतरसिन्ने वेदो उदीच्यदेशे अदुपनीतभोजनं कुर्वन् कुप्यतीति न स्वेदेशे । कुतः देशमागणपाद् तद्विज्ञितपण्यतामानागणपरिदम्पः । Compare *स्मृतिच.* q. by *स्मृतिच.* (वर्णान्न p. 130) 'अन्नचारिदापादोः साधो भोजनकर्म च । भागुतादिपुत्राणां च विवाहः शिष्यसंनयः । इत्येते दाक्षिणायाचानामपि गीता (मविगीता!) उदाहरणः । नमुद्रयाने मीनस्य भक्षणं शस्त्रजीविका । संयुधान्मुद्रितोद्विष्येवतानामपि विज्ञितानि चमत् । a. Taking food in the same plate with one's wife is forbidden by Manus IV, 43 and Vā. I. 151. Vide H. of Lih. vol. II p. 765 n. 1833.

1664. सर्वेपानेनवादीनां पतिदेशे स्पष्टरघवा । आगतमेव संशयं कुप्यदुपनयनाभितम् । देवां परम्परामासां पुण्यैरप्यनुष्ठिताः । न तु तेन कुप्येवुराचार्यैर्नैतरे जनाः । ...तत्र च ननुदि-काशयभितोद्विष्याचार्याणां धर्मागममहापण्यतन्मुद्रितम् । अपरतन्मन्त्रं तु सौधापनेन स्मृति-विज्ञितपुत्राचारिदापादमैव सन्धकता निराकृतम् । स्पष्टकामादिहस्वन्तरद्वेनाका विज्ञा-चार्यानामावस्तन्मन्त्रं वा स्मृतिमूलकोपपत्तिः । तत्र. p. 211. The *च. प.* p. 22 quotes the verse देवां परम्परा and remarks 'न कुप्येवः आगतवादी राजद्वन्द्वान्न न नमुद्रितपण्यः'.

as valid, as it is opposed to the views of Gaut. (XI. 20), as Baud. expressly states that certain practices though prevalent in certain localities cannot be accepted as valid and binding even in those localities because they are opposed to the express words of such authoritative and highly venerated smṛtis (as those of Manu). Manu in several places provides for the enforceability of customs and usages. In Manu VII. 203 it is said, 'the conqueror should hold as authoritative and binding the lawful customs of the conquered country, just as they are stated to be' and in Manu VIII. 41 and 46<sup>1665</sup> it is provided, 'A king who knows dharma (sacred law) should carefully inquire into the customs of castes, of countries, of guilds and of families and settle (or enforce) the customs peculiar to each. Whatever may have been practised by the good and by twice-born men devoted to dharma, that shall be established (by the king) as the law, provided it be not opposed to the (customs of) countries, families and castes'. Medhātithi adds that the king has to see whether the customs of countries, families, castes and guilds are directly in conflict with the Veda or are harmful to others or utterly immoral (such as marrying one's mother) and only those that are found not to be so are to be enforced by the king and he<sup>1666</sup> adds on Manu II. 6 that the practices of śiṣṭas (persons who are well conducted, free from greed and learned in the Veda) on matters on which the Veda and smṛti are silent and which they observe with the consciousness that they (practices) are right (dharma) should be deemed to be based on Veda. He offers certain illustrations of such practices and also

1665. आहिजानपद्वान्मर्त्यं श्रेणीधर्मोऽथ धर्मविदुः। समीक्ष्य कुलधर्मोऽथ स्वधर्मं विविधावु-  
च्यते ॥ मनु. VIII. 41, on which Meha. remarks 'समीक्ष्य विचार्य किमागन्तव्यं विवक्षा अथ  
न तथा पीडाकरः करणचिदुत न एवं विचार्य वैद्विक्कहास्ताम गोविदादन्तु अनुमानेनोद्विष्यते ।  
... मनुविवाहादिः सार्वभौमेन निवारणीयः । ... एककार्षापका वनिकृकारकुलीन चाह-  
विषाद्व्याः तेषां धर्मो श्रेणीधर्मोः । It should be noted that in other words also the Pārāśakas were credited with the highly immoral practice of marrying  
one's own mother. Ytde वनसिद्धकचम् 'श्रुत्वा मे वदन्निनयते दुर्पितदोषाच्चूडेतेमास-  
कोपयेत् पारसीकेषु च स्वसन्निवोसदेवः सिद्धेषु विधत्तितद्विधयोः इति ।' (4th  
आध्याय p. 23). The स्मृतिच. (I. p. 10) and स्मृतिह. (पञ्चम प. 130) quote  
several verses from an anonymous smṛti one of which is तथा मातृविवाहोपि  
पारसीकेषु दृश्यते.

1666. आचारश्चैव साधुना चक्रावेन वेदविरुद्धमिति सम्प्रचरते । पद्वहेन शिष्टत्वं  
त्यजते । शिष्टानां च आचारः सोपि धर्मो मृतम् । आचारो न्यवहारः अनुष्ठानं यथ स्मृतिवृत्ति-  
माक्याने न सति शिष्टाश्च धर्मेषु दृष्टान्तिष्ठानि तदपि वैद्विक्केन दूषयन्त्यतिपथम् । यथा  
विवाहादौ कलुषपन्थादिमाहृतिकलेन यत् क्रियते या च कल्याणार्थद्वैविधादिपथमावा-  
नरुपावृत्तयश्चतुर्धयादिपूर्वा देशभेदेन तथा दूषासंख्या वेदभेदेन (वाच 1) वा चाति-  
व्यादीनां सुबोद्धीमाननुवृत्तिः विपदिनश्चमापिमाहृत्यनुष्ठानादिकम् । मेधा. on मनु II. 6,



relies<sup>1667</sup> upon the words of the Mahābhārata (Vanaparva 313. 117), 'what is true dharma is concealed as in a dark cave; the (only) path is to follow great men'. In I. 118 Mann declares that the ancient (or long enduring) laws (or customs) of countries, castes, families and the rules among heretics and companies (of traders and the like) have been dealt with by him in the śāstra (institutes). Yaj. I. 343 provides that when a conqueror reduces a country to subjection he should preserve intact whatever customs, laws and judicial procedure, and family usages are handed down from generation to generation therein (provided they are not opposed to śāstras and, as the Mlt. says, he should not cause confusion by imposing the usages of his own country on the conquered country). Yaj. II. 192 (like Manu and Gaut.) provides that the varying usages and conventions of śreṣṭhī (guilds of artisans), naigamas (traders), heretics and associations (of soldiers and the like) should be respected by the king in the same way as he honours the usages of learned brāhmanas. About the latter Yaj. II. 186 says that the king should sedulously enforce the conventions of learned brāhmanas which are not opposed to the dictates of the Veda and smṛti (such as about pastures, water-courses and wells and the preservation of temples) and he should also enforce his edicts that are not opposed to Veda and smṛti (such as making provision for travellers and prohibiting the sale of horses to an enemy &c.). Kautilya prescribes<sup>1668</sup> that the king should follow as regards inheritance and partition the customs that are in vogue in a country, a caste, a *saṅgha* (company or guild) or a village. Devala<sup>1669</sup> and Brhatparāśara (X. p. 281) have a verse very similar to Yaj. I. 343. The Mahābhārata remarks that there is no custom or practice that can be said to be beneficial

1667. अथर्ववेदं व्यासो महाजनो येन गतः स पन्था इति... विद्वत्सो ह्येव निष्कामाः  
पृथिवीर्वा अग्निद्यावः लोकैः । अध्यात्ममार्गिकीं प्रवृत्तिं सापि वेदमन्त्रादिभिर्देवैरेति । मेघा.  
०० मनु II. 1. The whole verse is: तर्कोऽनित्यः द्रुतयो विनिष्ठा नैवोऽपिर्वर्तकं यत्  
व्याजम् । धर्मस्य तर्कं निमित्तं सुहायं महाजनो येन गतः स पन्था = वनपर्व 313. 117;  
the words 'धर्मस्य तर्कं निमित्तं सुहायं' are quoted by निम्बक on वा. I. 9.

1668. देवदत्त जगता सङ्ग्रह्य धर्मो धामस्य वापि यः । उचितस्तरं तेनैव धारयन्  
प्रकल्पयेत् ॥ अर्थशास्त्र III. 7. p. 163; अक्षपलमध्यक्षः ... निष्पद्युस्तकस्यानं कारयेत् ।  
प्रवाधिकरणानां संख्या... देशकामनाहितुलसङ्ख्यातानां धर्मव्यवहारचरितसंस्थानं... निष्पद्य-  
तुल्यफलं कारयेत् । अर्थशास्त्र II. 7 p. 62.

1669. यस्मिन्देशे युरे धामे वैल्लेखे मत्तरेऽपि वा । तौ यत्र विहितो धर्मस्तं धर्मं न विचार-  
येत् ॥ देवता II मनुस्मृति. I, p. 10.

to all alike<sup>1670</sup>. From this it follows that variations in practices were to be tolerated by the king. Brhaspati<sup>1671</sup> advises the king to keep intact the customs of countries, castes and families that have been long in vogue in them and states that otherwise the subjects become irritated and disaffected and there is loss of wealth and army. He gives certain striking illustrations of peculiar practices: 'members of the twice-born classes in the southern countries take in marriage their maternal uncle's daughter; in the middle country (the country between the Himalaya and the Vindhya lying to the west of Prayāga and to the east of Vinasana where the Sarasvati disappears, as said by Manu II. 31) artisans and menial workers eat the flesh of a cow; in the eastern countries people (all including brāhmanas) eat fish and women are given to adultery; in the north women drink liquor and contact with them even in their monthly illness is allowed; the people of the *Khakha* country take as wives the widows of their own brothers; these several people are not liable to undergo punishment or penance because of their doing these things in the respective countries'. Mediaeval writers differed about the meaning of the last half verse. The Madanaratna said (acc. to V. P. p. 22) that there is neither punishment nor *prāyaścitta* when the above practices which are opposed to *smṛti* texts are indulged in by the inhabitants of the countries specified, while the V. P. p. 22 holds that there is only absence of punishment at the king's hands for these people in those countries, but they are still liable to undergo *prāyaścitta* and that if these practices are followed in other countries both punishment and *prāyaścitta* have to be undergone.

1670. न हि सर्वलिङ्गः कश्चिदाचारः संपन्नैः । जाम्नि 261. 17.

1671. देशजातिकुलानां च ये धर्मास्तत्परिज्ञातः । सर्वेषु ते पातनीयाः ननु यत्नस्तद्वद्वत्  
 राजाः । जलापरिस्मिन्नपि नदीं कोशस्थं नदीनि । उद्वाहनेन वाहिण्यायैर्मातुस्तत्र स्त्रिया द्विजैः ।  
 तत्रपदेशे कर्मकरा द्वित्वेन च वयादिनः । मत्स्यवाद्यश्च नराः पूर्वं स्पष्टिकाररताः क्षिणः । उत्तरे  
 मत्स्योपा मार्गैः सुहृदा मुपां रजस्तथाः । जलजाताः गण्डह्वयि भातुमार्गानिर्मुक्ताश्च । अनेन  
 कर्मणा नैते वापश्चिन्नमार्गिकाः ॥ दुष्ट. q. in. स्मृतिच. L. 10 (except जलाप ... नदीनि  
 and last half), स्व. नि. p. 16 (except first verse and a half), मदनमाला (folio 3a  
 except half verse उद्वाहनेन), स्मृतिच. (वर्णोद्भव p. 130), सुकर्मोति IV. 3. 48-52,  
 स्व. मद्रूप p. 7 (except the half verse उद्वाहनेन &c. and mentions नराः सर्वे as v. 1.),  
 स्व. v. p. 22. उद्वाहनेन represents the Khakha tribe in the Vitastā valley. एते-च  
 बृहस्पतिना । अनर्जुनाश्चातुर्मासं दत्तं चानिदृष्टितम् । कुले कथावादानं च देशेन्यथेन  
 दृष्टेः । दृष्टं on आप. p. II. 10. 27. 3 (Bühler's ed.).



Kāl.<sup>1672</sup> defines what is meant by the customs of countries and families and states how and when they are to be enforced: 'That is said to be the custom of a country, which is in vogue in a country, is of long standing and is not opposed to the Veda and Smṛti. That is called family custom which has come down hereditarily in a family as right conduct (dharma) to be observed (by members of that family); the king should preserve it as it is. In disputes between the residents of the same country or capital, hamlet or cowherds, town or village the decision should be based on their own conventional usages, but in disputes between inhabitants of these and others the decision must be in accordance with the sacred texts. Therefore the king should decide the causes of people according to the rules of śāstra: but in the absence of texts he should carry out (the administration of justice) according to the usage of the country. Whatever conventions are settled in accordance with the consent of (the people of a) country should always be preserved in writing sealed with the royal seal. Such conventions should be sedulously upheld as if they were the dictates of śāstra and the king should decide (disputes) after carefully considering them.' Here Kāl. is principally concerned with the decision of legal disputes on the basis of the customs of countries and families, but his rules also have a general application. He also states that in the case of the conflict of laws by which the parties are governed śāstra prevails. Pītāmaha<sup>1673</sup> has a similar verse about the usages of towns, villages and guilds and mentions that Br. held the same view. Manu also (VIII, 3) requires the king to decide the disputes of people according to principles drawn from local customs (*dehadr̥ṣṭa kṛtā*) and from the Institutes of law (*śāstradr̥ṣṭa*). Medhātithi (on Manu VIII, 3) gives some interesting illustrations of local customs; viz. in certain southern localities a sonless widow

1672. परम देशस्य यो धर्मः श्रुतः सार्वकालिकः । श्रुतिस्मृत्यभिरुपेक्षेन देशकृतः स व्यवहारे । गोत्रस्मृतितस्तु या तेषां कलावाचति धर्मतः । कुलधर्मे तु तं गच्छः पालयेत् सखी तु ॥ देशसत्त्वगोत्रेषु पुराणेषु धर्मिणाम् । तेषां स्वसन्धैर्धर्मशास्त्रतोषेषु वैः सह । तस्माच्छास्त्रासु-सारेण राजा कार्यणि साधयेत् । पाकपात्राणि तु सर्वेषां देशकृतेन संनयेत् ॥ देशसत्त्वगोत्रेषु व्यवहारे वा निरुपिना । लिखितं तु सदा धर्मा बुद्धिना सक्तमुदा । शास्त्रसामान्यो रह्य तां निरीक्ष्य विनिर्णयेत् । कात्या. q. by स्मृतिच. II. p. 26 (all except the verse तोष-सिखितेषु); परा. मा. III. 41 (has first, 3rd and 4th), अपराक्ष p. 599 (has the fourth), अ. न. pp. 21-22 (has 2nd and 4th), अ. नि. pp. 15-16 (has the first two).

1673. शान्तोदपुराणेष्विमाधर्मेष्वानिवाशितान् । व्यवहारश्चरित्वेन निर्णयतो बृह-स्पतिः । वितान् q. by स्मृतिच. II. p. 26.

occupies a square low table in the hall of justice, when she is struck with dice by the judicial officers and then she gets her husband's property (this is a reminiscence of Nirukta III. 5 explaining Rg. I. 35. 7), in the north there is a custom that when certain persons come on behalf of a bridegroom seeking for a virgin in marriage and they are fed at the house of the girl's father then it is implied that there is a promise to give that girl in marriage to that particular bridegroom. These two customs are not opposed to any *śruti* or *smṛti* (and even the V. P. p. 10 refers to the second as prevalent in the north and Madhyadeśa). But Medhatithi mentions other local usages that are opposed to *smṛti* e. g. grain is lent in spring and in the autumn of the same year double of it is taken. This is opposed to the rules of *smṛti* laying down rates of interest.

Very difficult questions arise in regard to the relative force of *śruti*, *smṛti* and *sadācāra* and numerous rules have been laid down in cases of apparent and real conflicts among them. As Manu II. 6, Vas. I. 4-5 and Yaj. I. 7 mention the sources of dharma to be *śruti*, *smṛti* and *sadācāra* in that order, the Mītakṣarā remarks<sup>1674</sup> that 'in case of conflict, each preceding one of those three has more force (or blinding character) than each succeeding one.' *Śruti* or Veda is recognised by all *smṛti* writers as the highest or supreme authority for those who desire to know what dharma<sup>1675</sup> is (vide Manu II. 13 and Yaj. I. 40). If two vedic texts of equal authority are in conflict, then Gaut<sup>1676</sup> I. 5, Manu II. 14 and Jābali declare that there is an option. For example, there are two Vedic texts 'he takes the *sodāsin* cup in the Atirātra sacrifice' and 'he does not take the *sodāsin* cup in the Atirātra'. In this case there is an option. Similarly Vedic texts say that the daily Vedic *agnihotra* may be performed after sunrise, or before sunrise or when neither the sun nor stars are visible. Therefore there is an option, viz. the daily *agnihotra* offering may be made at any one of the three times specified (Manu II. 15). But a vedic text which is in apparent conflict with another is not always of equal force with that other. In such a case there is no option, and various rules are laid

1674. एतेषां त्रयोपे पूर्वाङ्गत्वं परीयत्यम् । मित्र. on वा. I. 7.

1675. धर्मं जिज्ञासमानानां समाप्तं परमं सुनिः । मनु. II. 13 : धर्मं ... त्वमने सुनिः ।  
विहीनं तु समाप्तानि पूर्वाङ्गं लोकसंज्ञः । इन्द्रगीतम् XIV. p. 399 : विद्वा वा. I. 40.

1676. तुल्यबलविरोधे विकल्पः । गी. I. 5 : सुविहितं तु यत् स्यात्तच्च पराङ्मुनी रच्यते ।  
रच्यविहितं तु विषयः कल्पनीयः इत्यहं इत्यहं । जगद्विद्व. q. by सुविद्व. II. p. 496. The first half of Jābali's verse is the same as Manu II. 14.



down in the *Pārvamīmāṃsā* some important ones among which will be discussed at length in the section on *Pārvamīmāṃsā*. Such texts may be explained by holding that one lays down a general rule (*sāmānya*), while the other lays down a special rule (*viśeṣa*) or an exception, or that one is a *vidhi* and the other merely an *arthavāda* or that the two texts have different scopes or refer to different ages &c. All these rules about the interpretation of Vedic texts have been held to apply to *smṛti* passages. For example, *Manu* VIII. 381 is a general rule absolutely prohibiting the killing of a *brāhmaṇa*. While *Manu* VIII. 350 allowing the killing of a *brāhmaṇa* in self-defence is a special rule or may be regarded as a mere *arthavāda* (viz. even a guru who is really not to be killed on any account may be killed when he is an *ātātāyin*, what of others, as the *Mit.* on *Yāj.* II. 21 explains). Similarly *Manu* VIII. 351 saying that there is no fault (i.e. no sin, no punishment and no *prāyaścitta*) in slaying an *ātātāyin* has restricted scope as applying only to an *ātātāyin* who is not a *brāhmaṇa*. A few more examples will be given immediately below.

In cases of conflict between *śruti* and *smṛti*, the rules laid down by the *Pārvamīmāṃsā* have already been explained (pp. 832-34). *Jaimini* VI. 1. 13-14 and *Śābara* furnish an example. If, relying on *Manu* VIII. 416, the *pūrvapakṣa* were to argue that women own no wealth and so should not engage in a vedic sacrifice then as that *smṛti* so interpreted is opposed to the Veda it may be discarded by women<sup>1677</sup>. *Smṛti*s also lay down certain general rules on that point. *Laugākṣi*<sup>1678</sup> and *Jābala* lay down that in case of contradiction between *śruti* and *smṛti*, the former has greater force and that if there is no contradiction then what is laid down in the *smṛti* should be observed as if it were laid down by the Veda. The *Mit.* on *Yāj.* III. 46 admits that a proposition of the Veda cannot be set aside (*bādhta*) by even a special proposition in a *smṛti* text. But in spite of the general proposition commentators like *Viśvarūpa*, *Medhātithi* and *Vijñāneśvara*

1677. कलौस्त्राविज्ञेयान् । के. VI. 1. 13 ; यदि स्मृतिमनुवर्तमाना पक्षका निर्वाता च स्यात्, पक्षेतेषुके यदि न पक्षेत । तत्र स्मृत्या कृतिर्वाप्येत । न चेत्तस्याप्यन् । वस्मात्कलापिनी सती स्मृतिमपान्नीकृत्य इत्थं परिहृयिष्यामहेति चेति । शबर.

1678. कृतिस्मृतिविरोधे तु कृतिरेव बलीयसी । अविरोधे सदा कार्यं स्मृतौ वेदिक-पक्षदा । लौगाक्षि न. by हरमुक्त on नौ. I. 3 and स्मृतिच. I. p. 7. आह्वानाय p. 191 ; मित्रमिश्र in his commentary on यज. II. 21 reads (without naming the writer) कृति ... बलीयसी । परस्परविरोधे तु योग्यमुक्तं (च. I. व्यापयुक्तं) पक्षमप्युक्तं. The अधिकारमौल्युक्ती of देवनाथ reads परस्पर ... व्यापयुक्तं पक्षमप्युक्तं.

had to admit that what was laid down by *śruti* texts was set aside or contradicted or abandoned by *smṛti* texts or by popular sentiment. After the Udayaniyā (concluding *istī*) in the Agni-  
ṣtoma sacrifice was finished, a rite was prescribed by Vedic texts in which a barren cow (called Anūbandhyā) was sacrificed for Mitra and Varuṇa. But later on this was condemned and in lieu of a cow *amṛksā* (mixture of heated milk and curds) was substituted. Vide H. D. II. pp. 1200-1201 for the anūbandhyā cow and p. 628 n. 1198 above for the verse quoted by the Mīt. on Yaj. II. 117 condemning cow sacrifice in Kaliyuga. Yaj. III. 234 puts *govadhā* (slaughter of a cow) at the head of upapātaka. Medhātithi on Manu IV. 176 after stating that even such acts as donating all one's property in the Viśvajit sacrifice or killing a cow should not be done (though sanctioned by the Veda) remarks that he gives that explanation following his predecessors' views but that to him it appears that an express *śruti* text cannot be set aside by a *smṛti* passage<sup>1679</sup>. Viśvarūpa also (on pp. 25-26) after adverting to the fact that Yaj. III. 234 places *govadhā* at the head of *Upapātakas* remarks that this may apply to the killing of cows spoken of in *smṛtis* such as at the time of samāvartana (vide Manu III. 3) and that the rule must be upheld that a *smṛti* that is in conflict with an express text of the Veda is to be set aside. Sometimes even a *smṛti* text though theoretically weaker than *śruti* was allowed to prevail over a *śruti*. For example, the Veda prescribes the filling of the cups of wine in Sautrāmanī *istī*; but this is one of the matters prohibited in Kali<sup>1680</sup> (vide chapter on Kalivarjyas below).

The general rule is that when a custom or usage is opposed to the text of the Veda the latter must prevail. So early a writer as Āpastamba states this rule emphatically in several places. In Āp. Dh. S. I. 1. 4. 8 it is stated<sup>1681</sup>: 'For, an explicit *śruti* text has greater force than *śāstra* (usage) from which a *śruti* text (on which it may be supposed to be based)

1679. न हि मन्वस्यभुवि विहितस्य स्मृत्या वाच्ये व्याख्याः । मेधा. ०० मनु. IV. 176; तेन वेदविशद्वाया स्मृतेश्च इति निवेदिः । विश्वरूप p. 26 ०० वा. 1. 7.

1680. कश्चिद् द्रुष्यतेवापि बलवतो वाच्यः । यथा—सौत्रामण्यां सुषयग्रहणं यज्ञादीनि मन्वस्यभुवोरपि कलौ कुले विमानं यमानं वर्यामाहुर्मनीषिणः—इति स्मृत्या । अन्वयानर्थक्या-  
वनेः । परिभाषाप्रकाश p. 27.

1681. सुतिविं बलीयस्यानुमानिकाद्याचारान् । आप. प. सू. I. 1. 4 5; विवतिविधे सुति-  
सङ्गणं बलीयः । आप. I. 11. 30, 9; वेतिद्यदुक्तानां तु वेदाः प्रमाणमिति निष्ठा । यत्र यानि  
श्रुयन्ते त्रीहिकपदस्यानवयवात्कपालादीनामन्वयानुरवेनीचैः कार्यमिति तैर्विद्वद्वा आचारोऽप-  
मानमिति सम्पत्तेः । आप. प. सू. II. 2. 23. 9.



may be inferred." In I. 11. 30. 8-9 Āp. Dh. S. says, 'during the morning and evening twilights a *śaṣṭaka* should be seated outside the village and should restrain his speech (should not speak about worldly matters); but (an *agallhetrin* must not go out for) what is enjoined by *śruti* is of more force in case of conflict of duties'. Similarly in Āp. II. 9. 23. 8-9, 'It is the settled view of those who are deeply learned in the three Vedas that they are (highest) authority. They consider that the rites which are there prescribed for performance with rice, *gava*, animals, clarified butter, milk, potsherds (in conjunction) with the wife and accompanied by loudly or inaudibly recited (mantras) must be performed and that a usage opposed to these rites is without authority'. In spite of this and the doctrine of the *Pūrvamīmāṃsā* stated above (p. 843) usages sprang up that were opposed to or gave the go-by to the prescriptions of the Veda as will appear a little below and particularly in the section on *Kalivarjya*.

The conflict of *smṛtis* among themselves presents much greater difficulties. From very ancient times authors of *smṛtis* differed greatly among themselves. A few striking examples may be cited. Āp. Dh. S. (I. 6. 19. 2-12) cites the views of ten predecessors on the question of the persons whose food may be partaken of by a *brāhmaṇa* (*ke āśyāmaḥ*). The difference between *Gautama* and *Baudhāyana* on the one hand and Āp. on the other on the question of the validity of certain usages in certain localities has already been referred to (p. 858). In III. 15 *Manu* mentions three views (and four sages) on the question of the position of a *brāhmaṇa* who marries a *śūdra* wife or has a son or a child from her. *Baud. Dh. S.* I. 8. 2, *Manu* III. 13, *Viṣṇu Dh. S.* 24. 1-4, *Par. Gp.* I. 4, *Vas.* I. 25 show that *brāhmaṇas* were allowed to have *śūdra* women as wives. But *Yaj.* I. 56 emphatically dissents from this by stating 'this is not my view'. In this state of affairs the medieval digests and commentators were hard put to it to evolve rules of interpretation. One rule early evolved was that when two *smṛti* texts were in conflict, 'reasoning based on the practices of elders (*śiṣyas*) was of greater force' (*Yaj.* II. 31)<sup>1652</sup>. The *Mit.* explains that *ratilocīna-*

1652. *सुव्योक्तिरपि न्यायस्तु यत्नान्द्वयवहासः* । वा. II. 21, on which the *vy. n.* p. 13 remarks 'न्यायानुपपन्नसुव्योक्तिरपि न्यायोपपत्त्या सुविर्बलमिति न्यायानुपपत्त्य-सुव्योक्त्यापत्तिरकल्पना कर्तव्येति । अथ चोक्तर्थापवाद-विषयवद्वया-विकल्पवद्विरुद्धम्

tion may take the form of holding that one text lays down a general rule and the other lays down a special rule (which prevails over a general rule), or the text may be held to relate to different sets of circumstances or in the last resort it may be held that there is an option, but in arriving at these conclusions the practice of the old or of śāstras who follow the rule in one text and discard or avoid the rule in the other text is the guide.<sup>1633</sup> Br.<sup>1634</sup> gives the following warning to those who do not take reasoning into consideration: 'The decision (in a cause) should not be given by merely relying on śāstras, for in the case of a decision devoid of reasoning loss of dharma results'. Nār. (I. 40) provides in a strain similar to the Mit., 'when there is conflict between two texts of dharmaśāstra, it is declared that the method to adopt is to resort to reasoning, for the practices (of śāstras) are of great force and the strict letter of the law is overruled by them (or properly understood through them)'. These provisions remind us of the working of the principle of *equities* applied by the praetors in Rome to the rigid older legislation or the influence of Equity in English Law. When

(Continued from the last page)

स्वायस्य वाचायके हेतुनाह स्ववद्वारस इति । वृद्धपक्षपादाद्व्यवस्थानिरेकादिक्यादनादि-  
स्तुल्यपरपर्यायान्तरादा वसेतस्य इत्यपी । विचित्रम् reads स्तुतेर्विरोधे and gives three  
interpretations of this. One is the same as that of the Mit. The other two  
are; (2) when there is a conflict between smṛti and reasoning, smṛti  
is stronger (he approves of this); (3) in case of conflict nyāya is stronger than  
smṛti. मित्राक्षर In his commentary on वा. II. 21 explains स्ववद्वारस differently  
as 'स्ववद्वारसः स्ववद्वारे विद्यते'.

1633. In *Bhuru v. Sundrabai* P. J. for 1874 p. 250, where the question  
was whether daughters were excluded from inheritance as regards the  
Upat family of priests at the temple of Vithoba at Pandharpur), Yāj. II. 21  
was translated (at p. 252) as follows: 'If two texts be opposed *equity* is of  
force for their construction'. In *Chunital v. Sarafraam* 33 Bom. 433 at  
p. 439 Yāj. II. 21 is rendered as 'where there is a conflict between two or  
more smṛtis that one should be accepted, which is conformable to equity'.  
The former rendering is rather obscure and the latter does not translate  
Yāj. clearly. The exact meaning of 'equity' in this translation is not clear.  
It certainly does not mean 'equity' in the strict sense of English Law.

1634. स्वायस्यनालोचयते होदनाह वृद्धपक्षिः । केषले शास्त्रमाश्रित्य न कर्तव्यो हि  
विर्णयः । कुक्तिर्हीने विचारो तु धर्महानिः प्रजायते ॥ स्प. मयुख p. 7. The verse is q. by  
पर. मा. III. p. 39, स्प. मा. p. 282, स्तुतिच. II. p. 24, स्प. य. p. 13 ; धर्मशास्त्रविरोधे  
तु कुक्तिपुक्तो मिथिः स्तुतिः । स्ववद्वारे हि बलवान् धर्मरत्नेनावर्णयते ॥ नारद I. 40. कुक्ति  
means लोकस्ववद्वार acc. to स्प. मा. p. 282. The स्ववद्वारस्तत्र (p. 199) says, धर्मशास्त्र-  
योस्तु विरोधे लोकस्ववद्वार पृथक्परीतः । ... अर्थायते अवगम्यते हि वाताविश्वरमादातोः ।



old rules become too narrow or are deemed to be not in harmony with the views of a changing or progressive society, it was thought to be the privilege of the king or the judge to adopt his practice to the existing state of society and not to decide a case by a too strict adherence to ancient dicta.

Another rule that was laid down was that in case of conflict between dharmaśāstra and arthaśāstra, the former is of more weight or authority or that one should discard the rule in the arthaśāstra<sup>1685</sup> (Āp. Dh. 8. 1. 9. 24. 23; Yaj. II. 21; Nār. I. 39; Kāt. 20). Vide pp. 8-9 above for an explanation of this rule. The rule of the arthaśāstra has the accomplishment of a visible or worldly purpose as the goal, while the dharmaśāstra rule has as its purpose the securing of unseen or spiritual results. Therefore the latter from a spiritual or ethical point of view is superior to the former.

Several other methods of resolving conflicts between smṛtis may be mentioned here. Br.<sup>1686</sup> states: 'Manusmṛti occupies a pre-eminent position because it puts together the purport of the Vedas; that smṛti which is in conflict with the purport of Manu is not commended'. Āngiras also states that to follow the words (of another smṛti) disregarding the unrivalled dharmaśāstra of Manu would not be beneficial to a person. The Mit. on Yaj. III. 300 speaks of the Manusmṛti and others as the great smṛtis (mahā-smṛti). Some writers<sup>1687</sup> quote the Vedic text 'whatever Manu said is indeed medicine' in this connection, thereby identifying the author of the Manusmṛti with the Manu named in the Vedas. But this does not afford much help. Another principle evolved was that certain rules of conduct and certain smṛtis were of special authority in certain cycles of time. Manu (I. 85-86 = Śānti 232. 27-28 = Parāśara I. 22-23

1685. इव विपतिपतिः स्वाद्धर्मशास्त्रार्थसाधयोः । अर्थशास्त्रीकमुत्तुङ्गं धर्मशास्त्रीकमाचरेत् ॥ नारद I. 39; मेधा. on मनु. VII. 1 says 'तत्र च कात्यायनः । अर्थशास्त्रीक... शास्त्रीकमाचरेत् ॥'.

1686. वेदार्थोपनिषद् (इष्टं) व्याप्यमानं हि मनोः स्मृतम् । मन्वर्थविपत्ता तु वा स्मृतिः सा न दमयेत् ॥ शास्त्राध्यायिणि शोभन्ते तर्कव्याकरणानि च । धर्मार्थमोक्षोपदेया मनुष्याणां दूषयेत् ॥ बुध. ५. by कुल्लुक on मनु. I. 1. The first is q. by अपराधि p. 628 and by स्मृतिच. I. p. 7 (reads वेदाङ्गोपनिषद्वाच्यं); यथावाहिनाः । यत्पूर्वं मनुना योक्तं धर्मशास्त्रमष्टमम् । न हि तास्मृतिकस्य वचनं द्रिष्टव्यमननः ॥ स्मृतिच. I. p. 7, स्मृतिवृ. (वर्णाश्रम) p. 6.

1687. अतिरिचि यत्ने किं च मनुवद्वक्तव्यमम् । स्मृतिवृ. (वर्णाश्रम) p. 6. This text is in नै. सं. II. 2. 10. 2 and Kābhaka XI. 3 has almost the same words.

= Brhat-Parāśara I. p. 55) himself says that the dharmas differ according to which of the four yugas is current, viz. *tapas* is the highest dharma in the Kṛta age, knowledge in Tretā, *yajña* in Dvāpara and only *dāna* in Kali. This verse only means that in a particular yuga the predominant or easily performed dharma is the one indicated but the verse does not mean that a dharma predominant in one yuga was prohibited in another. Parāśara I. 24<sup>1688</sup> (= Brhat-Parāśara I. p. 55) declares that in the Kṛta age the dharmas (to be observed) were those promulgated by Manu, in Tretā those of Gaṇtana, in Dvāpara those of Śaṅkha-Likhita and in Kali those of Parāśara. This also did not solve all difficulties, since the medieval digests and commentaries found that even what was allowed by Parāśara came to be disapproved of or condemned by the people. Many prescriptions of the *smṛtis* were therefore included under *Kalivarjya* (acts forbidden in the Kali age) on the ground that action, though at one time prescribed or sanctioned by the śāstra, should not be resorted to, if it has become hateful to the people, since it would not lead to heaven<sup>1689</sup> (if persisted in). This was the dictum of Yāj. I. 156 (= Brhan-Nāradiya-purāṇa 24. 12), Manu IV. 176, Viṣṇu Dh. 8. (71. 84-85), the Viṣṇupurāṇa (III. 11. 7), Śukra III. 64, Bārhaspatya-sūtra (on Arthasāstra) V. 16. Vide p. 630 and n. 1202 above. These texts were relied upon for prohibiting certain acts (though done in former times) by the Mī. (on Yāj. II. 117, III. 18), V. P. (p. 442) and others. But these devices of interpretation also proved futile in certain cases. On the question of the periods of mourning due to death for ksatriyas and others the texts are so various and so conflicting that even the great Viṣṇuśvara declares (on Yāj. III. 22) that he is not going to furnish any orderly presentation of the *smṛti* texts assigning to each its proper province, since it would be useless to do so in view of the fact that the usage of śāstras did not agree with most of them<sup>1690</sup>. Viṣṇurūpa also (on Yāj. III. 30) is in the same predicament. The commentators (such as

1688. कृते तु मानवो धर्मवेत्तापि गौतमः स्मृतः । द्वारे जाह्नवलिखितः कलौ पाराशरः स्मृतः ॥ पाराशर I. 24 q. by स्मृतिच. I. p. 11. This is ascribed to बृह. in the आचारसूत्र p. 12 quoting from the परा. मा.

1689. परिप्रेक्ष्यैर्दुर्गतानां धर्मैरीडाकरो बृह । धर्मलज्जमुज्ज्वलं लोकविद्विषमेव च ॥ विष्णुपुराण III. 11. 7; धर्ममपि लोकविकृतं न कुर्वन् लोकविद्वद्वा मानवैः । बार्हस्पत्य-सूत्र V. 16.

1690. इत्येवमनेकोप्याचारशास्त्रीष्वकल्पा वृद्धिनाः । तेषां लोके समाचारमात्रमात्रातीत्य-पर्यायवर्तमानमुपयोगीति मात्र व्यवस्था न्यद्वयेति । मित्र. on या. III. 22.



Mādhava in Par. M. on I. 1. p. 84) were aware that people would not go in for religious practices that called for great effort and would seek for such rules as would be easy of observance.<sup>1691</sup>

In some cases it was provided that where there is a conflict among smṛtis the view of the majority should prevail. Gobhila-smṛti (III. 148-149) provides<sup>1692</sup> that where there is a conflict among passages (of smṛtis), authoritativeness rests with that view which is supported by a majority of the texts, but where two passages are of equal authority then reasoning has to be employed. The assumption or axiom was, according to Medhātithi<sup>1693</sup> (on Manu II. 29 and XI. 216), Mīl. (on III. 325), Sm. C. (I. p. 5), Apararka p. 1053, Madanaparijata (pp. 11, 91) and others that all smṛtis form one śāstra, that if some smṛti texts on the same subject are in conflict there is an option and when there is no conflict all rules from all smṛtis should be held applicable to the subject matter; this was based on the analogy of the maxim called 'sarva-śākhāpratyanyāya' or 'śākhāntarādhikaraya' (vide Jai. II. 4. 9 and Śabara thereon).

It is further provided that works of heretical sects were to be left out of consideration. Manu calls them smṛtis, but they are outside the pale of Vedic orthodoxy. Manu (XII. 95) declared,<sup>1694</sup> 'the smṛtis that are outside the (pale of) Veda and all false or fallacious doctrines are of no avail after death, because they are all based on ignorance'. In the Vedāntasūtra (II. 1. 1) also the word smṛti is applied to the works on the

1691. अतः कार्यं याजिनो न्याससंशये धर्मं बहुवचनमन्वात् सुकरो धर्मोऽत्र प्रयुज्यते । परा. भा. I. part. I p. 34.

1692. अन्वयानो यो विद्वान् स्वात्त काधो बहुभिः स्मृतः । वागसंनिह (वाण ?) इत्यादि वसिष्ठे कथितं यथा । विरोधो यत्र वाक्यानां सामान्यं तत्र सूत्रमात्रं । तत्रैव सामान्यकले तु न्याय एव (एव ! ) प्रकीर्तितः । योगिलस्मृति III. 148-149. वागसंनिहो वैद्यया (i. वसिष्ठ XI. 57 (about the length of the staff of a vaidya brahmacārin). The verse विरोधो यत्र is quoted (without name) in अष्टमासत्रय p. 767.

1693. यथा सर्वज्ञास्मान्मन्यमेकं कार्यं एवं सर्वस्मृतिरन्यमपि । यत् बहुवचनान्मन्य-लीनां कार्येष्वपानिपत्यव्यवसायाः । सर्वासां सामान्याविशेषादेकार्थानां विकल्पः विचारार्थानां सहस्रवचनः । मेधा. on मनु II. 29; एकतास्त्रयात्मकसंस्तुतीनामपि विरोधे सम्यं योग्यं विरोधे तु विकल्पः । मेधा. on मनु XI. 216; एवमन्येभ्यो विरोधिष्वर्थेषु विकल्प आश्रयणीयः । अनिरोधिषु बहुवचनं । शास्त्रान्तराधिकरणन्यायेन सर्वस्मृतिरप्यव्यवसायार्थः । मिता. on वा. III. 325.

1694. या वेदवाक्याः स्मृतयो वाच्य काच्य कुहस्यः । सर्वासां निष्कलाः केच ततो-निता हि ताः स्मृताः । मनु XII. 95. This is quoted by the तन्वयार्तिज्ञ on जै. I. 3. 5 p. 196 with the remark 'एतदीका ग्रन्था एव च सम्पादिभिः परिवार्यतेनोच्चाः । या वेदवाक्याः...ततोनिता हि वा स्मृताः इति । तस्माद्धर्मं प्रति सर्वावाक्यैर्वैजलीयकं सामान्यदेमा-नवैश्वं स्यादिति सिद्धम् ।'

Sāṅkhya philosophy. The *Tantravārtika* (p. 195) says that the Buddhists and other heretical sects do not admit that their doctrines are based on the Veda, like a bad son hating his parents; the prescriptions contained in their works are opposed to all the 14 *vidhyās* except in the case of a few sentences laying down restraint of senses, charity and the like; they were promulgated by persons like the Buddha who had given up the path of the Veda and did acts contrary to the Veda and they were propounded to persons that were beyond the pale of the three Vedas and that mostly were śūdras and persons outside the system of the four vargas and āśramas. Medhatithi on Manu II. 6 adopts this and remarks<sup>1695</sup> that the Śākyas, Bhojakas and Kṣāpanakas do not admit the Veda as authoritative, they openly declare the Veda to be unauthoritative and they teach doctrines directly opposed to the Veda. The *Caturvīṃśatīmatā*<sup>1696</sup> states that the words of Arhat (Jina), of Cārvāka and of Buddhists, should be abandoned as they lead to delusion.

Then comes the question of the conflict between *smṛti* and *purāṇas*. It has been shown in the H. of Dh., vol. I pp. 160-167, how the *Purāṇas* are rich in *Dharmaśāstra* material. The *sūtras* and early *smṛtis* do not look upon the *Purāṇas* as a source of dharma, though Gaut. XI. 19 and Yāj. I. 3 mention *Purāṇa* as one of the classes of works on which the king or any one else may draw for knowledge of dharma and though the Āp. Dh. S. quotes from a *Purāṇa* in I. 6. 19. 13, I. 10. 29. 8 and II. 9. 23. 3 and names a *Bhaviṣyatpurāṇa* in II. 9. 24. 6. It is to be noted that the views quoted by Āp. from the *Purāṇas* in the first three passages are opposed to the views of the *Kalivarjya* section alleged to be taken from the *Ādityapurāṇa* in medieval digests. The passage of the *Tantravārtika* stating that *Purāṇas*, *Manusmṛti* and *Itihāsa* are universally accepted throughout India has been already quoted (on p. 853). When Manu states that *smṛti* is a source of dharma he does not obviously comprehend *Purāṇas* under *smṛti* as Manu II. 10 clearly shows (*dharmaśāstram tu vai smṛtiḥ*). Manu III. 232 and Yāj. III. 189 employ the plural '*Purāṇāni*' and so those *smṛtis* obviously

1695. नहि शाक्यनीलकण्ठपुनःकादीनि वेदमन्त्रयोगसंनयो येन सम्पुल्लङ्घ्य स्तस्मिन्ने  
अनामं सधुः स्वयमन्यसुपयमात्रैश्च वेदस्याप्राप्त्याभिधानात् सप्तशतवेदविज्ञानार्थेपिदेहाद्य ।  
वेत्त. on मनु II. 6.

1696. अर्थादायकसाम्यानि बौद्धाद्विपश्चितानि च । विमलमन्त्रसाम्यानि तानि सर्वानि  
वर्जयेत् ॥ चतुर्विंशतिमतः (q. in मनुविमु., वर्णाश्रम, p. 7, स्मृतिसं. I. p. 3).



knew several Purāṇas and Medhātithi notes that they were composed by Vyāsa and described the creation of the world &c. The Striparva (13, 2) also employs the plural and the Svargā-rohanikaparva (5, 46-47) speaks of Kṛṣṇa Dvaipāyana as the author of 18 Purāṇas. The Ādiparva<sup>1697</sup> (I, 293-34) prescribes that one should strengthen the Veda by (the study of) the Itihāsa and Purāṇa and that the Veda fears the man whose knowledge is insignificant 'this man will harm me'. According to the Bhāgavata-purāṇa I, 4, 25 the purpose<sup>1698</sup> of the composition of the Mahābhārata was this that as the Veda cannot be learnt by women, śūdras and brāhmaṇas who are so only by birth (and do not study) the sage Vyāsa took compassion on them and composed the Mahābhārata for their benefit. The same must be deemed to be the purpose of the composition of the purāṇas. The Dakṣasmṛti II, 69 prescribes<sup>1699</sup> the recitation of Itihāsa and purāṇa in the 6th and 7th parts of the day (divided into 8 parts). The Auśāneśa smṛti (III, p. 515, Jivananda) prescribes the study of the Veda in the bright half of the month from Māgha after *utsarjana* and the study of the Vedāṅgas and of Purāṇa in the dark half. It appears that some at least of the extant Purāṇas were composed in the first centuries of the Christian era and that from early times they contained dharmāśāstra material. In another section the *parārūpādharma* will be separately dealt with hereafter. Gradually the Purāṇas became very popular in the course of centuries, some of the original rites prescribed by the Veda and the early smṛtis went out of vogue and new modes of worship and rites provided by the Purāṇas came into general observance. The Vedavyāsa smṛti<sup>1700</sup> (I, 4) and the Saṅgraha state that in case of conflict between smṛti and purāṇa smṛti is to be

1697. इतिहासपुराणां वेदं समुपबृंहयेत् । विभक्तपञ्चवादेदो मामर्षे अहरिष्यति (v. 1. अहरिष्यति) ॥ आदिपर्व 1. 293-294 (= इत्यारम्भे chap. 3 p. 30, Jivananda, = वायुपुराण I, 201, बसिष्ठ 27, 6). It is ascribed to बृहस्पति in the स्मृतिषु. I, p. 3. लघुव्यास II, p. 320 (Jivananda) reads the first half as वेदांसमुपबृंहयेत्.

1698. श्रीकृष्णविरचनपूर्णां चरणी न क्षतिगोचरा । इति भारतमहाकाव्यं कृष्णा मुनिना कृतम् ॥ भागवत I, 4, 25. तेनोक्तं सावते तस्य यन्मात्रा लुकिभामनयेत् । तत्र श्रीकृष्णदासानां संस्कारो वैष्णवो नतः ॥ q. by the परिभाषाप्रकाश (p. 24) from the भागवतपुराण.

1699. इतिहासपुराणौः षडसतमन्तौ नयेत् । दश II, 69 q. by अपरांतं p. 137.

1700. क्षुतिस्मृतिपुराणां विरोधो यत्र दृश्यते । तत्र शीते मन्वायै रवात तयोर्विधे स्मृति-वेदा ॥ वेदव्यास I, 4. क्षुतिस्मृतिपुराणेषु विरोधेषु परस्परम् । पूर्वं पूर्वं पटीयः रपादिति न्यायविदो विदुः ॥ संग्रह q. by स्मृतिषु. (वर्णभूमि) p. 7.

preferred. Aparārka (p. 9) quotes<sup>1701</sup> a *smṛti* text, 'that is highest dharma which is understood from the Veda, that is to be known as inferior dharma that is declared in the Purāṇas and the like'. Aparārka (p. 15) further tells us that<sup>1702</sup> according to the Bhaviṣyatpurāṇa the purāṇas are of authority in declaring dharma that is *vyūmitra* (i. e. mixed up and not purely Vedic). Medieval writers were often divided as to the authoritativeness of purāṇas. Mitrāmīśra (in his commentary<sup>1703</sup> on Yāj. II. 21) asserts that dharmaśāstra (viz. *smṛti*) is not more authoritative than purāṇa and that in case of conflict between a *smṛti* text and a purāṇa text recourse must be had to reasoning as in the case of conflict between two *smṛtis*. On the other hand, the V. Mayūkha,<sup>1704</sup> after quoting Manu IX. 126 and Devala about the first born among twins being regarded as the oldest and after referring to a half verse from the Bhāgavatapurāṇa (rather from the commentary of Śrīdhara thereon) which holds that among twins the one born later is to be deemed as the elder, remarks that the Purāṇa passage is to be set aside in favour of the *smṛti* passages and that in the purāṇas usages opposed to the *smṛtis* are very frequently met with. It further says that this view is preferable to that of some others according to whom in this matter the custom of the country should be followed. The Nīrṇayasindhu (III. p. 251) also says the same. The respect for the purāṇas carried away late medieval writers so far that relying on some prophetic passages in the purāṇas about the disappearance of four varṇas in the Kali age and the subsistence of only brāhmaṇas and śūdras therein, they denied the existence of kṣatriyas and vaiśyas in the Kali age, in spite of the fact that all *smṛtis* (like Manu, Yāj., Parāśara) and many commentaries (including the Mītākṣarā) hold that the four varṇas exist in the Kali age.

1701. अतः स परलो धर्मो यो वेदादधिक्यमते । अतः स तु विज्ञेयो यः पुराणादिषु स्मृतः ॥ व्यास q. by अपरार्क p. 9, परिभाषाव्यास p. 29, कुरार. p. 59.

1702. एवं प्रतिज्ञायानपि पुराणाद्युक्तैरेतैर्कर्मभेदा बाह्या नान्ता । तेषामेव व्यासिश्चधर्म-  
प्रमाणत्वेन भविष्यदपुराणे परिज्ञातत्वात् । अपरार्क p. 15.

1703. तेन पुराणाद्वर्णशतं स्मृत्यात्मकं न बलवत् । किं तु स्मृत्योपि स्मृतिपुराणयोः  
परस्परविरोधे न्यायाद्वलावत्तम् । मित्रमिश्र ad वा. II. 21; एवं स्मृतिपुराणयोर्विरोधस्तत्र  
विहताः ॥ संस्कारभार folio 14 a (part of हसिहयसाह).

1704. वस्तु द्वौ तदा भवतो भर्गो ब्रह्मविज्ञापयन्वात्—इत्यादिना भागवते पञ्चाब्जात्मक  
वैष्टवयुक्ते तदुपपन्नेन चारणे । पुराणेषु स्मृतिविरुद्धाचारार्थां बहुशो दर्शनात् । देवा-  
चारतो अपरथा ज्ञेयेति चेन्नित । इत्येव तु पूर्वोक्तमेव । एव. मयूख pp. 97-98. Vide राज-  
नीतिय. pp. 37-39 for a similar view.





make efforts to follow it'.<sup>1709</sup> This has been the basic text in modern decisions that recognize the binding nature of customs. It is therefore necessary to understand the exact meaning of this verse. Two constructions are possible; (1) that the word *ācāra* is qualified by the words 'śrutyukta' and 'smṛta' and that the first half declares that usages declared in the Veda or *smṛti* are transcendental law (this is the meaning given by most commentators of *Manu*); (2) that *ācāra* by itself and other rules of conduct declared in the *śruti* or *smṛti* are transcendental (I.e. here in the first half of the verse there is a reference to three kinds of *ācāras*, as Govindarāja and Nandana explain). If we look to the preceding verse and the following verses (that eulogise *ācāra*) the 2nd construction looks more natural and has been accepted by the decided cases when<sup>1710</sup> they lay down that 'immemorial usage is transcendental law' (Sir William Jones' translation of *Manu* I. 108) and that "under the Hindu system of law clear proof of usage will outweigh the written text of the law". The *Anuśāsana* (141. 65) and *Śanti* 354. 6 expressly state that *dharma* is threefold viz. that declared in the Veda, that declared in the *smṛtis* and the third is what is practised by *śiṣyas*. *Sumantu*<sup>1711</sup> emphatically declares that family usage should be preferred to the prescriptions of *sāstra*. The *Kūrmapurāṇa*<sup>1712</sup> (*Uttarārḍha* 15. 19) appears to support the 2nd interpretation when it says, 'one should observe that *ācāra* which is declared by the *śruti* and *smṛti* and which is rightly followed by the good'. The exact import of the word *ācāra* (or *sadācāra*) has been shifting from age to age and among commentators. In the earliest days, as shown by the *Tai. Up.*, *Gaut.* (28. 48, 51), *Baud. Dh.* S. I. 1. 4-9, *Manu* XII. 108-109,

1709. आचारः परमो धर्मः श्रुत्युक्तः स्मार्त एव च । तस्मादस्मिन् सदा युक्तो नित्यं स्थावरात्मकः द्विजः ॥ *Manu* I. 108; 'च' श्रुत्युक्त आचारः बुद्धयसाधारण्यव्यापकस्वाध्यायार्थं च धर्मोत्पत्तिः यथा स्मार्तः स परमः महद्वर्गो धर्मः परमो यतोऽप्येवमादृशकालदिग्गजः अतस्मार्तधर्मैकः 'मोक्षिन्धराजः', 'श्रुत्युक्तोऽपि धर्मोऽस्मिन्' इति; स्मार्तोऽप्येवमिति; 'अस्मिन्' इत्ये 'नन्दन', compare अनुशासन 141. 65 देवोक्तः परमो धर्मः स्मृतिमात्रतोपरः । द्विजाचार्यः परं धर्मोक्तवर्गो धर्मोः सनातनाः ॥ and शांति 259. 3 सदाचारः स्मृतिर्वैदिकिर्धर्मो धर्मोत्पत्तिः ।

1710. Vide *Collector of Madura v. Mootoo Ramlinga* 12 Moo. I. A. 397 at p. 436, *Bhyash Ram Singh v. Bhyash Ugur Singh* 13 Moo. I. A. 373 at p. 390.

1711. तस्मिन् कुलकृमागतमाचारं त्वान्तरं बुद्धः । स गरीयसः सदावहो सर्वज्ञोऽविज्ञादपि । *हमन्तु* p. 67 स्मृतिः. (वर्णाश्रम) p. 7.

1712. स्मृतिस्मृत्यादिकः सम्पदः साधुभिर्न च हेतुः । समाचारं निवेद्य वेदोक्तवत् कार्दचित् ॥ (कर्म, उत्तरार्ध 15. 19).



Vas. I 6, the *śāstra* to be followed was that observed or declared by learned brāhmanas who were highly moral and selfless (the *śiṣṭas*). Medhātithi on Manu II 6 states that binding *śāstra* is that of *śiṣṭas* learned in the Vedas. Gradually every usage that had no visible secular purpose came to be looked upon as binding and lastly the usages of *śūdras*, of *pratiloma* castes and even of heterodox sects became, as will be shown in the sequel, enforceable by the king. As observed in 39 Mad. 298, 301 the commentaries indicate an attempt to reconcile the text law with the actual usages of the people.

The requisites of valid customs, according to the *smṛtis* and commentaries and digests, are similar to those laid down by the writers on *Pūrvamīmāṃsā* i. e. they must be ancient, must not be opposed to *śruti* and *smṛti*, must be such that they are regarded by respectable people as obligatory on them and such as are observed with that consciousness by the *śiṣṭas*, they must be strictly construed and cannot be availed of by others not within their purview and must not be immoral or severely condemned by popular sentiment. Customs once in vogue may be abandoned by the people as the chapter on *Kalivarjya* will show.

From Gaut., Manu, Br., Kat. and other writers quoted above it follows that the customs and usages of which account has to be taken are those of districts ( *deśa* or *janapada* ), towns and villages, castes, families, guilds or corporations or groups ( *gana*, *śreni*, *saṅgha*, *maṅgama*, *varga* ). A few words on each of these and on usages of *gotras* and *jātkās* will be said later on and a few illustrations of each will be given. But first of all certain preliminary observations have to be made about customs in general. The medieval writers on *Dharmasāstra* make it clear that customs that depart from the generally received *smṛti* prescriptions must be strictly construed and that they cannot be extended on the ground of analogy to other matters outside the specific acknowledged customs. For example, both the Sm. C. (I 71) and the *Smṛtimuktāphala*<sup>1713</sup> (on *Varnāśrama* p. 31) say that, though one's maternal uncle's daughter can be married (by custom) yet one's mother's sister or mother's sister's daughter

1713. अथ वाङ्मयविनिर्माणेषु निवृत्तकविष्णुनाशाया मातृसविष्णुत्वान्नाहृतव्या परि-  
शेषा । एवं यैतन्मतेष्वपि । न च तयाविधा मातृत्वं स तद्वद्विधा च किमिति न परिशेषोऽपि  
वाच्यम् । आकाशविशेषेति लोकविद्वत्त्वाद्दर्शनमपि लोकविद्विषं तन्माह्वयेत् । तद्वत्कं मनुना  
अस्मभ्यः ... चरेत् त्व इति । स्मृतिम्. ( *व्याख्यान* p. 131 ). Vide H. Dh. vol. II,  
p. 467 n. 1096 for the passage of the Sm. C. almost in the same words.

cannot be married, because popular sentiment is opposed to the latter kind of marriages and popular sentiment has to be respected as Manu declares (in IV. 176). Similarly the Śaṅkṣārakaustubha<sup>1714</sup> and the Dharmasindhu provide that where there is a local or family usage for narrowing down the limits of sapīṇḍa relationship in marriage, only those who belong to that locality or family can avail themselves of such narrowing down, but if a person in a different locality or belonging to a different family were to follow the practice of narrowing down the sapīṇḍa relationship, he would incur blame. Owing to the vastness of Bharatavarṣa it was recognised that what was *sadācāra* in one country would not be so in another, as is noted by the Par. M. (I 2. p. 65) in relation to marriage with one's maternal uncle's daughter.<sup>1715</sup>

A few words may now be said about customs of countries. That usages about details of ritual varied a great deal even in the Vedic times is quite clear. The Śat. Br. (I. 1. 4. 13) notes that in former times it was the wife of the sacrificer that rose at the Haviskṛt call, but that in its own day the wife or a priest (the Āgnidhṛa) rises in answer to the call. Vide H. of Dh. vol. II. p. 1027 and n. 2311 on the Haviskṛt call. For similar differences in practices vide the same Brāhmaṇa XII. 3. 5. 1 and XII. 6. 1. 41.<sup>\*</sup> The Alt. Br. frequently refers to one view and refutes it by saying that one should not do so (*tat tathā na kuryāt*) or one should discard it (*tat tat nāśṛṇyam*) e. g. vide chap. 12. 7, 17. 1, 18. 8; 28. 1, 29. 5. Vide also Tai. Br. I. 1. 8, I. 3. 1, III. 8. 8 for similar words. That different districts had different customs about marriages and other matters even before the times of the grhyasūtras and dharmasūtras has been

1714. Vide H. of Dh. vol. II. p. 465 n. 1093d for the quotation from the Dharmasindhu. The सं. की. p. 613 remarks 'यस्तु देशानुरूपेण कुलनामैव बोद्धव्यं । नित्यं स व्यवहारः । स्वादेशात्सर्वत्रैव योऽपि ॥ इति चतुर्विंशतिमतां च । तुलीयां मातुलः कर्मणो तुलीयां विष्णुमन्त्राय । विवाहदेशेन तु बाह्यं पाराशर्योऽपि विवाहः ॥ इति चतुर्विंशत्पारिजातोद्गाहसहस्रविंशतिमतां च ।' and adds (p. 620) अतः सिद्धमेतत् । कदापि देशं कुले देशेऽनुकूलस्येव साधिव्यवसङ्गोच्चा परम्परया समागतः तेषां बाह्यप्रसङ्गोच्चेन न दोषः, अस्ति च भार्यालोचनः । अन्येषां तुः साह्य व्यवहारे नैव दोषः । स्वयं तु कुलदेशविद्वत्सापि-  
च्छसंकोचेन विवाहे भवति न दोषः । The two verses यस्तु देशः and तुलीयां are quoted by the वेङ्कयन्ती on विष्णुसर्गसूत्र 24. 10.

1715. यद्यपि मातुलस्युद्गाहपरिपन्नहृदीपवसिष्ठमन्त्रे तथापि दाक्षिणात्यप्रदेशाच्चरि-  
तत्वेन नाभिगमिष्यन्तुदीप्यानामाचारः । न च दाक्षिणात्यानां रामयुतले सङ्गृहीतं विधिविधे-  
रपिभक्तैरेव सङ्गृहीतकरणात् । मातुलस्युद्गाहपरिपन्नहृदीपवसिष्ठमन्त्रेनाभिगमिष्यन्तुदीप्यानामाचारः ।  
परा. म. I. part 2 p. 65.



noted above (pp. 856-857). Bandhāyana made a distinction about the customs of the northern and southern people (countries). That customs of the northern and southern countries differed is emphasized by many commentators and writers of digests. For example, the Mit. on Yāj. I. 256 refers to the differing views of dākṣiṇātyas and udīcyas on Ekoddīṣṭa-śrāddha. Śaṅkara-bhaṭṭa in the introductory verses of the Dvāitanirṇaya (or Dharma-dvāita-) expressly states that he will furnish solutions of knotty points in Dharmasāstra after abiding by the views of southern writers.<sup>1712</sup> The Nirṇayasindhu in its section on śāpiṇḍya speaks of Śūlapāṇi, Vācaspati and Śuddhiviveka as Gaudas and Māthilas, and points out that Śūlapāṇi in the Sambandha-viveka and the Sambandhatattva (a Gauda work) allow marriage with a girl separated by three gotras from the bridegroom, while the southern writers (dākṣiṇātyas) do not accept the view. But in those days there were no rigid territorial boundaries for certain practices or doctrines. For example, Vijñāneśvara, Madana-ratna, Pārijāta, Vācaspati and Śūlapāṇi accepted the view that śāpiṇḍya arises from community of the particles of the body, while Aparārka, Smṛticandrikā and Mādhava (though they were southern writers like Vijñāneśvara) held that śāpiṇḍya was based on the offering of pipḍa in śrāddha. The fashion of dividing Hindu works into schools and assigning them definite territorial limits started with Colebrooke and has been perpetuated by decisions of the Privy Council and of the Indian High courts. Vide *Collector of Madras v. Mootoo* 12 Mad. L.A. 397 at p. 432 (for reference to Colebrooke), p. 435 (as to how schools arose), pp. 436-437 (as to different schools). Strange results have flowed from this. The Vyavahāra-mayākha, written by Nīlakaṇṭha, whose family belonged to Paithān in Mahārāṣṭra and migrated to Benares and who himself wrote under the patronage of a Bundella chief, came to be regarded as a work of the highest authority in Gujarat and North Konkan (even superseding the Mīlākṣarā), while in Mahārāṣṭra proper its authority is subordinate to that of the Mīlākṣarā. The Mit. (on Yāj. II. 119) avers that in the section on the partition of heritage the texts generally repeat what is

1710. सोमनाथैवसाध्यागमनीयिज्ञो नानुसङ्गः । ... इत्येव विप्रत्ययैरेतुर्लक्ष्यं  
मन्त्रानि ह । इतिविप्रत्यये सिद्धा धर्मवैतु निर्णयः । तद्वदे सोमनाथैव नानुसङ्गः कथंचन ।  
धर्मवैतुनिर्णय Intro. verses 5-9.

already current among the people<sup>1717</sup> and that if Yaj. II. 113-119 were interpreted to mean that the words 'what is acquired at the cost of paternal estate by a person himself' stand by themselves and do not qualify the other clauses, then what is acquired through friendship even at the cost of the paternal estate would not be liable to partition, which would be opposed to the practice among people. The Vyavahāra-mayūkha also<sup>1718</sup> says on Manu IX. 210 (about reunion) that the law and administration of justice are generally based as is the case with grammar on people's usages. The Viramitrodaya also states that all writers of digests are agreed that smṛtis on Vyavahāra generally re-iterate recognized popular usages.

Customs of countries and families have been specially recognized from very ancient times in the sphere of marriage. The Āśv. gr. (I 7. 1-2) has been already cited above (p. 856). The commentators on Āśv. gr., Haradatta and Nārāyaṇa, both mention that in certain countries sexual intercourse is commenced immediately after marriage, that this practice is opposed to the rule in Āśv. gr. I. 1. 10 that the married couple should be celibate after marriage for at least three nights (if not for a longer period) and that one should follow the rule laid down in the gṛhyaśūtra and not the usage of the country. The Āp. gr. (II. 15) remarks,<sup>1719</sup> 'people should understand from women (and others) what procedure is (to be followed according to the custom of the country)' and the commentator Sudarśanācārya notes that certain rites like the worship of planets, *nikurāṅgama* and the tying of *pratisara* (a string or ribbon tied round the wrist) are usual and are performed with Vedic Mantras. The Kāthakagṛhya (25. 7) allows the usages of countries and families to be observed in marriage and the

1717. नञ्च यमस्य प्रतिषेधः किन्तु सिद्धस्यानुवादोऽयम् । लोकसिद्धयैवावधारण-  
कारणैव यथेच्छाभिरुपकरणं वक्ष्यामि । मित्ता. on या II. 119. Vide note 1091 above  
about partition of what is obtained through friendship. यथेष्टेन व्यवहारस्तुमीनां  
लोकसिद्ध्याधीनतादकारणमेति सकलविषयानुभविमितामाह । पृ. म. p. 420.

1718. वेनाचारमूलकलोचनं वक्षतः सम्भवति तद्विवक्षुषुणिकल्पनमन्योऽयम् । व्यव-  
हारशास्त्रस्य स्थापकव्यवस्थेनाचारमूलकताच्चेति तु चेत् । पृ. म. p. 146.

1719. आपृतश्चा स्त्रीयाः यदीयेत्यन् । आप. गृ. II. 15 । मन्वरीहिताः क्रियाः आपृत  
उच्यन्ते । इत्युक्तं । आ स्त्रीयाः स्वर्गवर्गेण्यः सकाशात् अयमप्य प्रतीयेत्य कुरीत्य विधीयते ।  
तत्र समन्वयता यदपूर्वाङ्कुराद्येवमभितरवन्धाया आचारसिद्धाः । अमन्वयता मागवलि-  
पक्षपदीयान्वापीपूजादयः । ताव्य यथाजनपदं यथावर्णं यथाकुलं यथाक्षीरं यथाधिता एव ।  
न तु सर्वं सर्वत्र समुचितम् । तात्पर्यदर्शनं.



commentators mention some usages, viz. Devapāla refers to stating the purpose of the visit, announcing the name of the maiden, worship of family deity, striking with flowers and creepers. The com. Brāhmanabala states that in Kashmir at the time of marriage the mother-in-law or some other woman whose husband is alive ties an auspicious wreath on the heads of the bride and the bridegroom, that the mother-in-law places flowers on the feet, knees, shoulders and head of the bridegroom and on the same seven places of the bride's body flowers are placed but in the reverse order (i.e. first on the left limb and then on the right).

Haradatta on Gaut. XI. 20 (cited above in n. 1662) mentions the following usages: in the Cola country while the sun is in the zodiacal sign of Aries maidens draw with powders of various colours on the ground an orb of the sun together with attendants and offer worship in the morning and evening; on the full moon day of Mārgaśīrṣa maidens putting on ornaments walk about in the village and offer to a temple idol whatever they get in their wanderings; when the sun is in the sign of the Crab, maidens worship the goddess Umā while the moon is in the constellation of the Pūrva Phalgunis and offer to the gods *mudga* beans that have put forth sprouts and salt; when the sun is in the sign of Pisces, house-holders worship the Goddess of wealth while the moon is in the constellation of Uttara Phalguni. Āp. Dh. S. II. 6. 13. 7 notes that in certain countries the special portions of the eldest son in paternal wealth are gold, dark-coloured cattle and black-coloured produce of the soil (i.e. black grain). Vide Bṛ. and Tantravārtika quoted above (as to customs of certain countries).

Several such illustrations may be furnished from other writers, but considerations of space make it necessary to omit reference to them.

The Par. gr. S. I. 8 states<sup>1720</sup> that the usages of villages may be followed, since a text says 'one should enter a village (i.e. follow the opinion of village elders) in case of marriage and funeral rites' and since the Veda says that 'the village is the authority in these two.'

1720. ग्रामाचारं च कुर्तुं विवाहः समाप्तयोर्ग्रामं प्रविशतादिति वचनात्ग्रामाचारयोर्ग्रामः समाप्तमिति श्रुतेः । पार. दृ. सू. I. 8.

Numerous caste customs have been recognized from ancient times to these days. Gant. XI. 20, Vaa. I. 17, Manu I. 118, VIII. 41 and 46, Kaat. III. 7, Śukra IV. 5, 47 emphasize the validity of caste customs and call upon the king to enforce them. Yāj. I. 361 advises the king to punish those who swerve from the usages of their family, caste, guild, or group. Kātyāyana (40) enjoins<sup>1721</sup> that the king should not disregard the fixed usages even of *pratiloma* castes and of the inhabitants of inaccessible places (mountain forts or habitations), even if they be opposed (to the rules of *smṛtis*). In the *Paribhāṣa-prakāśa* Mitrāmīra holds<sup>1722</sup> that the usages of good *sūdras* free from moral defects are binding on their sons and others even though they do not know the Veda.

Compared to Western Christian countries very great religious tolerance prevailed in ancient India. Vide H. of Dh. vol. II. pp. 388 (n. 928a), 723-724 for some remarks on this. Aśoka in his Pillar Edict VII (E. I. vol. II p. 272) says that he looked after saṅghas, brāhmaṇas, Ājivakas and all other sects (*pāsāṇḍa*). The Bhagavadgītā (IX. 23-25) proclaims that the devotees that worship other gods do worship Kṛṣṇa himself though in an irregular way and that those who offer worship to the Manes or to the elements reach the goals they desire. The *Manasollāsa* enjoins<sup>1723</sup> that one should give up condemnation of or hatred towards other gods, that one should show reverence on seeing an image or a temple and should not pass it over (in contempt). People of different countries no doubt twitted each other on the customs and usages peculiar to each; but, it rarely went beyond the bandying of words. For example, 'even such a

1721. वसिलोमयच्छेदु तथा दुर्गमिवासितु । निवर्तु निवर्त बाहुस्तं प्रमे न विचारयेत् ॥ कात्या. q. by sv. p. 39. The sv. ni. p. 16 reads वसिलोमये वदमानो ... निवर्तमानम् । वर्णानो निवर्तं प्रमे व्वाचयेत् न चालयेत् ॥ Acc. to the Vyavahāra-Kaṭpātara, बुह, read the verse as 'वसिलोमयच्छेदानी ... निवर्तमानम् । शास्त्रवद् यत्नतो यथा समिद्धायै साधनं तु सा' (quoted in 'Rājadharmā' p. 155 by Prof. K. V. Rangaswami Aiyangar).

1722. अथवा आचार्यैः साधूनामिति, ज्येष्ठः । एवं चायेद्विदामपि क्षीणदीपदुक्का-  
नामाचारः प्रमाणम् । तथा च सच्छब्दाद्याचारस्तदुवादीमपि भवति प्रमाणम् । परिभाषा-  
वृत्तात् p. 9.

1723. अन्वेषामपि देवानां मित्रां देवं च वर्जयेत् । देवं देवकुलं दृष्ट्वा नमस्कृत्यैव  
लक्षयेत् ॥ मानसोल्लास, verso 105 p. 11.



philosophical work as the *Jivannuktivivaka* remarks<sup>1726</sup> that brāhmanas of the south condemn even the learned brāhmanas of the north as fleash eaters and brāhmanas of the north condemn southern brāhmanas because they marry their maternal uncle's daughters and because they carry earthen vessels in fairs or on pilgrimages. It was on account of the general attitude of religious tolerance that the *smṛtis* and digests prescribe that even the usages of heretical sects should be enforced by the king. *Yaj. II. 192* prescribes<sup>1727</sup> that the king should guard against breach of the distinctive usages and conventions of guilds (of artisans), of traders, of heretical sects and bands (of soldiers). *Nārada (samayasānapākarma 1-3)* states<sup>1728</sup> that the king should uphold the conventions of heretical sects, of traders, guilds and other groups and that whatever traditional usages, activities, mode of attendance and means of maintenance were peculiar to them should be permitted to them by the king without introducing any change. Among the matters of which the king was to take cognizance *suo moto* and included under *prakṛpaka* by *Nārada* (verse 2) was the transgression of the usages of heretics, traders, guilds and ganas. *Bṛhaspati* provides<sup>1729</sup> that in disputes among husbandmen, artisans, wrestlers, money-lenders, guilds, dancers, heretics, thieves, a decision is to be given in accordance with their conventions. It is no doubt true that certain *smṛtis* present a sterner treatment of heretics and

1724. तथैवै वेदाभिहितेण परस्परं निन्द्यावाहुल्यमुपलभ्यते । द्वात्रिंशत्तैर्विधैराज्ञाह । वेदविद्यै विद्या नान्यमस्ति नो निन्द्यते । औपरात्रिश्च मातृसुतोऽजादिनो पात्रात् बुजाण्यजादिनो द्वात्रिंशत्तैर्विधो निन्द्यते । वद्वृषा जायन्तापनशांती काम्यशास्त्राणां यज्ञस्तो मन्त्रान्ते वाजसनेयिनस्तु वैपरीत्येन । जीवन्मुक्तिविशेषः (वासनासप्तमकारण) p. 54.

1725. अथितैरप्रपाक्यिष्ठमणानामन्यत्र विधिः । भेदं चैवं सुतो रक्षेत्पूर्ववृत्तिं च पातयेत् ॥ यज. II. 192 ; नैममा वे वेदस्याज्ञपणीतत्वेन प्रामाण्यमिच्छन्ति पाशुपतादयः । पाशुपतिनो वे वेदस्य प्रामाण्यमेव लेभ्यन्ति नम्राः संज्ञतादयः । ... एतेषां च क्षेत्रादीनां भेदं वर्तमानवर्धनं सुतो रक्षेत् । मिताः, the *Śūnikalika* explains 'नैममां पणितान्दिनानापीरसमूहः । पाषण्डः पञ्चपावसिताः'. कात्यायन defines नैमम as 'मानापीरसमूहस्तु नैममास्यः प्रकीर्तितः' and the *वृद्धिश्रमस* defines पाषण्ड as 'प्रामाण्यमेव वे वेदे न वदन्ति कुतश्च' । तेषां बौद्धार्हतादीनां पाषण्डारुपा प्रकीर्णते । पञ्चपावसिता वे तु पाषण्डारुपाः प्रकीर्णताः । (q. by स्व. नि. p. 13); vide उपरात्रि pp 171-72 for quotations from विष्णुधर्मोत्तर and विष्णुपुराण about पाषण्डिन.

1726. पाषण्डनैरमादीनां स्थितिः सम्यक् उच्यते । पाषण्डिनैरमश्रेणयूजज्ञातमयादिभु । संश्लेषमयं राजा दुर्गे जनपदे तथा । नो धर्मः कर्म पञ्चैवाद्युपस्थानविधिश्च यः । पञ्चैवां वृष्याद्यानमद्रम्येन तत्तथा ॥ नारद (सनवस्थानपाकर्म 1-3) q. by वि. र. p. 180.

1727. कीनाशाः कावका मन्त्राः कुसीवुभेगिनार्काः । लिङ्गिनस्तृकाराश्चैव स्त्रेण धर्मेण निषेधः ॥ बुद्ध. q. by स्व. मा. p. 281, स्व. नि. p. 11, स्व. य. p. 23 (which reads कावकाः निषिद्धासीदिः).

the like. Gant. IX. 17 provides<sup>1728</sup> that a *snātaka* should not talk with *mlecchas*, impure persons and sinners. Manu IX. 225 prescribes that the king should banish from his capital gamblers, dancers, heretics, vintners &c. Manu IV. 30 holds that one should not honour as guests even by words persons who are heretics, rogues &c. and recommends that one should not reside in a country which is overrun by groups of heretics. Yāj. II. 70 and Nār. ( *mādāna* 180 ) say that a heretic ( *pākhaṇḍī* ) or an atheist is not a proper witness. These passages may be explained in various ways. Probably the prescriptions of Gautama and Manu refer to an age when the schism caused by Buddhists and Jains was not very old and feelings between the followers of the Veda and the heretics ran high. But most of these prescriptions are addressed to the followers of the Veda as individuals. They do not negative the requirements laid down by Nār., Br. and others that the king ( though of a different persuasion ) was to enforce among heretics their own usages. It can be said without any fear of contradiction that at least from the 4th century A. D. onwards the policy of the State in India was 'to protect all religions, but to interfere with none'.<sup>1729</sup>

Customs of families will be briefly referred to later on in connection with modern law cases. Among family customs the customs about the year when *caṇḍa* was performed and the locks of hair kept on the head in the *caṇḍa* ceremony are frequently mentioned in the *gṛhya sūtras* and other works. Vide H. of Dh. vol. II pp. 260 and 265.

The digests contain numerous examples about the customs and usages that were adhered to among the followers of the several Vedic branches ( *śākhās* ) and the *gṛhya sūtras* in performing several religious rites. A few examples may be set out here by way of illustration. According to Yāj. I. 343 the offering of *pinḍas* to the *pitṛs* in a *śrāddha* takes place after the *brāhmaṇas* invited at the *śrāddha* are fed, while Manu III. 261 shows that they were offered also before the *brāhmaṇas* were fed. The Sm. C. ( on *śrāddha* p. 471 ) says that one should follow the practice of one's own Vedic *śākhā*. Among the five daily sacrifices ( *mahājñās* ) one is *pitṛyajña*, which acc. to some ( such as Kātyāyana ) means *tarpana*, while according to Manu

1728. न मलेच्छासुस्पृशामिकैः सह सम्भावेन । श्रौ. IX. 17.

1729. Vide *Vasudev v. Vamshaji* 3 Bom. 80 at p. 82 where Melvill J. states that this is the policy of the British Courts in modern India.



III. 81 it means *śrāddha* and the Sm. C. ( I. p. 203 ) provides that one should follow one's *śākha*. The same remark applies to the number of handfuls of water offered in *turpaya* ( Sm. C. I. p. 191 and *Madanapārijāta* p. 386 ). About the month of pregnancy in which the ceremony of *śimantonnayana* was to be performed each person was to follow his own *grhyasūtra* ( Sm. C. I. p. 17. and Par. M. I. part 2 p. 22 ). The same holds good as to the day of *nāmakarana* ( Sm. C. I. p. 31, Par. M. I. part 2 p. 25 ). It is not necessary to multiply examples. According to Gaut. XI. 21-22 and others already cited above, the king has to enforce the usages of guilds (*śreṇī*) and corporations. Several such usages have been cited above ( pp. 487-488 ).

## CHAPTER XXXIV

### KALIVARJYA

(ACTIONS FORBIDDEN IN THE KALI AGE.)

It has been stated above (pp. 865-866) that one of the several ways in which the conflict between several smṛti texts was got over was to hold some of them as legislating for a bygone age (yugāntara). For example, when Hārita allowed upanayana to women, both the Sm. C. (I. 24) and Par. M. (I. 2, p. 83) hold that the text refers to another *kulpa* (aeon). In H. of Dh. vol. II (on pp. 151, 162, 424, 451, 603, 612, 620, 750, 790, 796, 928, 929, 934, 953, 1005 n, 1201 n) reference has been made to several matters forbidden in the Kali age. It is remarkable in this connection to note that, though the Parāśarasmṛti (in I. 24) claims *par excellence* to lay down the dharmas for the Kali age, several important provisions contained in it, viz. the remarriage of a married woman<sup>1730</sup> (Parāśara IV. 30), the variation in the period of impurity due to births and deaths depending on the learning and character of a brāhmaṇa (Parāśara III. 5-6), permission for a brāhmaṇa to partake of the food of five classes among śūdras (XI. 21) are included among Kalivarjyas by the Ādityapurāṇa (as quoted by writers of the 12th and later centuries). It is necessary, therefore, to investigate into the origin and development of the Yuga theory and of the topic of Kalivarjya.

From the Mahābhārata (Śanti 59), Manu (I. 81), Nārada (I. 1-2), Bṛhaspati and the Purāṇas it is clear that they all believed in the existence of an ideally perfect community in the dīn past followed by gradual degeneracy and decline in morals, health and length of life. But they also believed that a cycle of decline would be followed in the far distant future

1730. Some of the printed editions of Parāśara (IV. 30) read नष्टे पुत्रे ... पतिरप्येव न विद्यते. But the Par. M. on it (vol. II part I p. 53) makes it clear that this reading was fabricated by orthodox people and that Mādhava at least read it as पतिरप्येव विद्यते, as he remarks 'अपि च पुनश्चकारो युवाणावविदधः'.



by another of moral perfection. The only pity is that all works that are extant think that they are in the midst of a very sinful age and there is not a single work which thinks that the era of perfection may dawn in the very near future.

The germ of the theory of progressive deterioration in morals is found even in the Rgveda. In the famous dialogue of Yama and Yamī the former exclaims in one place<sup>1731</sup> (Rg. X. 10. 10) 'those later ages are yet to come when sisters would do what is not sister-like'. The word 'yuga' occurs at least 33 times in the Rg., but the exact meaning is somewhat doubtful. In a few places it means 'yoke' (Rg. X. 60. 8, X. 101. 3 and 4). In several places it appears to stand for a very brief period of time (e. g. Rg. III. 26. 3). Generally it means 'a generation' (as in Rg. I. 92. 11, I. 103. 4, I. 124. 2, II. 2. 2, III. 33. 8, V. 52. 4). In Rg. I. 158. 6 'dirghatamā māmateyo jujurvān daśame yuge' *yuga* probably means 'a period of four or five years', while in Rg. VI. 15. 8, VI. 8. 5, X. 72. 2, X. 94. 12, X. 97. 1 it should mean<sup>1732</sup> 'a long period of time'. In the Atharvaveda VIII. 2. 21 *yuga* appears to mean a period of several thousand years, two *yugas* being indicated as longer than 10000 years (*śalam tesyulam hāyanān div yuge trīṇi catvāri kṛṇmah*). Here there is a clear reference to four *yugas* and to the fact that *yuga* meant a very long period of time. Whatever be the meaning of the word in each passage, the Rgveda does not contain the names of all the four well-known *yugas* viz. *Kṛta*, *Tretā*, *Dvāpara* and *Kālī*. The word '*Kṛta*' when used in the Rgveda appears to mean 'the best throw of dice or of the seeds of vibhītaka in gambling' (X. 34. 6, X. 43. 5). In the Atharvaveda VII. 52. 2, 3, 6 *kṛta* has the same meaning. *Kālī* is the name of the author of Rg. VIII. 66 and in verse 15

1731. अ वा ता गच्छादुत्तरा युगानि यत्र जामया कुरिष्यन्ति अजामिकर्त्तवि. Rg. X. 10. 10. The Nirukta (IV. 20) understood this verse in the sense given above 'आजामिष्यन्ति तानि उत्तरानि युगानि यत्र जामया करिष्यन्ति अजामिकर्त्तवि'. Rg. I. 113. 13 and III. 33. 8 make it clear that उत्तर must mean 'future'. जामयुरोवा युगस्य देवयो अजेर्देवयो नयोनी । अथो गच्छादुत्तरौ अद्वयनवरायुता चरन्ति स्वधानि : Rg. I. 113. 13. Here the occurrence and sequence of दुरा, अथ and उत्तराद् leaves no doubt about the meaning of the last word.

1732. वा औषधीः पूर्वा जाता देवेभ्यस्त्रिषुर्दुरा । Rg. X. 97. 1. Here what is meant by त्रिषुर् is doubtful. The Nirukta IX. 23 explains देवेभ्यस्त्रिषुर्दुराणि दुरा, while सायण says कृताश्चिद्वयवत्. In the अथर्व VII. 2. 4. 26 त्रिषुर् means 'three seasons of spring, rains and autumn' (S. B. R. vol. 41 pp. 332-340).

of that hymn we read 'kalayo mā bhīhitāna' (O descendants of Kali! do not be afraid). In Rg. X. 39. 8 the Aśvins are said to have rejuvenated Kali who had become old. Vide also Rg. I. 113. 15 (where Kali is said to have got a wife from Aśvins). But Kali as a throw of dice does not occur in the Rgveda. In the Atharvaveda VII. 114. 1 Kali<sup>1733</sup> means a throw of dice. The words *kṛta*, *tretā*, *dvāpara* and *āśkanulā* occur in the Tai. S. IV. 3. 3, Vaj. S. 30. 18<sup>1734</sup> and in the Śat. Br. XIII. 6. 2. 9-10 (S. B. E. vol. 44 p. 416). In later literature Kali is also called Tisya (as in Bhīṣmaparva 10. 3). In the Tai. Br. III. 4. 16 the word Kali is used<sup>1735</sup> in place of Āskanda. In all the above places Kṛta and the other three words denote throws in gambling, Kṛta being the most lucky and Kali being the most unlucky. In another passage of the Tai. Br. (I. 5. 11) we read 'the four stomas (Trivṛt, Pañcadāśa, Saptadāśa and Ekaviṃśa) are, Kṛta and the five are Kali; therefore the *catuṣṭoma* (should be performed in the Jyotiṣṭoma)'. This shows that Kṛta meant a throw of four or any multiple of four and Kali a throw which when divided by four left one as remainder. The Aitareya Br. employs the words Kṛta<sup>1737</sup> and the other three in a metaphorical sense as representing progressively more desirable states of human activity, 'one lying down becomes Kali, when about to leave the bed he becomes Dvāpara, when rising he becomes Tretā, and when he moves about he

1733. इदमुवाच बभूव नमो यो अक्षेपु वदुवशी । पुनरे कलिं सिद्धमि म नो पुनर्वाते-  
हरे ॥ उपर्व VII. 114. 1.

1734. 'अक्षराजाय किरां कृतावादिनवदुर्षं त्रेताये कालिने । द्वावरायाधिकलिपिनमाराक-  
न्दाय सभास्याधुम् । वाज. सं. 30. 18.

1735. कृताय सभाषिने त्रेताया आदिनवदुर्षं द्वापराय बहिःसदं कल्पे सभास्याधुम् ।  
तै. ब्रा. III. 4. 16. For आदिनव वदे उपर्व VII. 114. 4 'आदिनवं बलिदीहने  
पुनेनामर्षं अमिश्र' . सायण explains 'आदिनवदुर्षं नर्षाद्यायां देवनरय इभारं परीक्षकम्' .  
The meanings of these technical expressions in gambling are extremely  
uncertain.

1736. ये वै सत्पराः स्तोमाः कृतं तत् । अथ पञ्च कलिः ता । तस्माच्चतुष्टोमः ।  
तै. ब्रा. I. 5. 11.

1737. कलिः उपानो भवति सखिद्वामस्तु द्वापरे । उत्तिष्ठेता भवति कृतं सम्पद्यते  
चरन् । तै. ब्रा. 33. 3. The लाङ्कावतनमौत (13. 19) reads कलिः उपानः पुष्टः and  
उत्तिष्ठेता नवति, मनु IX. 301-302 seem to be reminiscent of this verse  
of the तै. ब्रा.



becomes *Kṛta*'. The *Śat. Br.* V. 4. 4. 6 speaks of *Kali*<sup>1738</sup> as '*abhibhū*' (the vanquisher) and suggests that *Kali* is a throw of five that vanquishes all others. In the *Chān. Up.* IV. 1. 4 it is said 'as (in a game<sup>1739</sup> of dice) all the lower throws are included in the *Kṛta* throw which becomes victorious, so to him (to *Raikya*) comes (the merit of) all the good acts that people do'. Here *Śaṅkara* explains that *Kṛta* is a throw of dice having four marks, while other throws that have three, two or one mark are called *Tretā*, *Dvāpara* and *Kali* respectively. The *Mundaka Up.* I. 2. 1 refers to *Tretā*<sup>1740</sup>. 'This is the truth; the sacrificial rites which the sages saw in the *mantras* (i.e. as prescribed in the hymns of the *Rgveda* and other *vedas*) have been performed in many ways in the *Tretā*'. This last word is explained by *Śaṅkarācārya* in two ways, first as referring to the threefold priestly duties (of *hotṛ*, *adhvaryu* and *udgātṛ*) which are based on the three *Vedas* and alternatively as referring to the *Tretā* age. From this resume it appears that even up to the times of the latest period of Vedic literature (i.e. *Upaniṣads*) the words *Kṛta*, *Tretā*, *Dvāpara* and *Kali* were used in the sense of throws of dice in gambling and that it is very doubtful whether they were used in the sense of different ages of the world. Even in the *Mahābhārata* *Kṛta*<sup>1741</sup> and *Dvāpara* are used also in the sense of throws of dice (vide *Virāṭa* 50. 24). In the *Gopatha Brāhmaṇa* (I. 28) there is a reference to the beginning of the *Dvāpara* age.

Even in the *Vedāṅga Jyotiṣa*<sup>1742</sup> (of *Rg.*) the word *yuga* is used in the sense of a period of five years (*pañcasahvatsaramayam*

1738. अध्वर्यवे गजानान्पाशावापयति । अभिधुरन्वेतास्ते वज्रं दिशः कल्पन्तामिमेव वा अपानमिधुरन्त्वा कलिरेव हि सर्वानपाणमिममिति तस्माद्गजानमिधुरसीति । *अतः* वा. V. 4. 4. 6. It is impossible to say definitely how the game was played. Vide S. B. E. vol. 41 p. 106 for a note on the various explanations.

1739. एषा कृतावितिजायाधरेषा संयत्नेवमेतत् सर्वं तद्विमर्शेति यावत् च यज्ञाः साधु कुर्वन्ति । *छान्दोग्य* IV. 1. 4 and 6. *Śaṅkara* explains: एषा काले कृतायः कुलो नामासी पुनस्तमेव विमिश्रयतुरङ्गः स यज्ञा जयति कुले तदुत्तमानं तस्मै विजिताय तद्वर्धमिहरे विद्वेषेताङ्गुलं अधरेषास्तेषां धारकालिनामानाः संयन्ति सङ्गच्छन्तेऽन्तर्भवन्ति । *छान्दोग्य* IV. 3. 8 suggests that each die was marked in all with ten dots (4, 3, 2, 1) 'तस्मा ज ह वृत्ते वा एते पञ्चान्वे वज्रस्ये वज्र संयत्नस्तुवन्'.

1740. तद्वैराग्यं मन्त्रेषु कर्माणि कवयो वाचस्पदपुस्तकानि केतावन् वृत्तान् संयत्ताणि । *छान्दोग्य*, I. 2. 1.

1741. तासां हि विपति गान्धीवं न कुतः द्वापरं न च । *विराट्* 50. 24 (*cr. ed.* 45. 23).

1742. नायसुक्रमयस्य वीरकृष्णसमापिनः । इतरथ पञ्चवर्षस्य कालज्ञानं यन्मन्त्रे ऽ त्रयस्य 3 of वेदाङ्गज्योतिष.

*yugādhyakṣam prajāpatim*). The ancient *Pitāmahasiddhānta* which is not now extant, stated, according to the *Pañcasiḍdhāntika* of *Varāhamihira* (XII 1), that *yuga* means five years of the Sun and the Moon (*raviśāśinoh pañca yugam varāṇi Pitāmahopadiṣṭāni*). This sense of the word is still found in the *Saṁhita* 11. 38.

The *Nirukta* (I. 20) distinguishes between ancient sages and those of later days in the words,<sup>1743</sup> 'the (ancient) sages had an intuitive perception of *dharma* and they imparted the Vedic mantras by instruction to later (sages) who had no intuitive perception of *dharma*'. But it does not mention or refer to any theory of four *yugas*. Both *Gaut.* 1. 3-4 and *Āp. Dh. S.* II. 6. 13. 7-9 give expression to the view that among sages of old transgressions of *dharma* and violent actions are observed, but that on account of their distinguished spiritual greatness they incurred no sin, while a person of later days, being weak in spiritual merit, should not imitate them, otherwise he would come to grief. Here a distinction is drawn between very ancient sages and later sages as regards the endowment of spiritual merit, but nothing is said about the names or the theory of the four *yugas*. *Āp. Dh. S.* I. 2. 5. 4 further says<sup>1744</sup> that sages are not born among men of later days (*anareṣu*) on account of the transgressions of religious ordinances (prevalent in later ages). Therefore, it would not be quite wrong to assume that the theory had not been fully developed even in the times of the early *dharmaśāstras* of *Gaut.* and *Āp.* even though both held that they were living in an age of decline and that sages coming after the authors of the *mantras* were inferior.

Here epigraphic evidence affords some help in fixing the lower limit of the period when the theory of *yugas* must have been developed.

In the Rock Edicts of *Aśoka* No. 4 and No. 5 we have at *Kalsi* and two other places the words '*āva kapam*' (*yāvat kalpam*) and at *Girnar* the words '*āva samvata kapa*' which mean 'up to the end of the kalpa' or 'up to the end of the kalpa when the clouds or fires of destruction called *samvarta*

1743. सप्तान्तरधर्माणं कृत्वो वदुस्तेऽसाञ्जानुवर्तन्ते उपदेक्षेन मन्त्रान्मयाहुः ।  
निरुक्त I, 20. Almost the same words occur in *वसवो* 153, 67.

1744. तस्मात्पुत्रोऽपरेषु न जायते नियमातिक्रमात् । *आप. ध. सू.* I. 2. 5. 4.



will arise <sup>1745</sup>. Vide C. I. I. vol. I. pp. 8, 10, 30-33. This indicates that the idea of a *kalpa* (a vast period of time at the end of which the universe would be dissolved) which is part of the theory of the yugas had been developed in the 3rd century B. C. The Junāgadh Inscription of Rudradāman <sup>1746</sup> (150 A. D.) refers to 'wind the velocity of which was as terrible as that at the end of the yuga'. In certain very early Inscriptions of Pallava <sup>1747</sup> kings (of about the 3rd or 4th century A. D.) they are described as 'always ready to extricate dharma that had sunk deep owing to the evil effects of the Kali age'. In one of the Gupta Inscriptions dated in the 26th year of the Gupta era (415-16 A. D.) Dhruvasarman is praised as following the path of righteous conduct which prevailed in Kṛtayuga, <sup>1748</sup> while the Chamnak copperplate of the Vakātaka emperor Pravarsena II also speaks of Kṛtayuga (Gupta Inscriptions No. 55 p. 237 at p. 240). The Talgunda inscription of the early Kadamba king Kakusthavarman refers to Kaliyuga (E. I. vol. VIII p. 34). It is not necessary to adduce passages from inscriptions of a later date. From the above it may be said that the theory of yugas and kalpas had begun to take shape at least in the 4th or 3rd century B. C. and that in the first centuries of the Christian era it had been fully developed. It must have gone through several stages in the course of its development. For example, Brahmagupta (Brāhmasphuṭa-siddhānta XI 10) states that the theory of yugas, Manus and kalpas set out by Āryabhaṭa was not like that of the smṛtis.

The same conclusion is arrived at from a consideration of the classical Sanskrit literature. The theory of *yugas* and *manvantaras* as detailed in the Mahābhārata (Vanaparva chapters 149, 188, Śānti chapters 69, 231-232), Manu chap. I, Viṣṇu-dharma-sūtra XX. 1-21, the Purāṇas (such as Viṣṇu I. 3, VI 3, Mārkaṇḍeya 46, Brāhma 229-230, Matsya 142-144) and astronomical writers from Brahmagupta is briefly as follows: Kṛta, Tretā, Dvāpara and Kali comprise together with the period

1745. Compare : तसः संवत्सरो वल्लिर्बोधुना सह भारत । लोकमाविशते दूर्ध्वमादिशे-  
दवशोक्तिम् । नमोर्ष 128, 69.

1746. धुमनिधनसहस्रपरमचोरवेधेन बाधुना in E. I. vol. VIII p. 36 at p. 43.

1747. Vide कलिधुमदोषावसङ्गप्रमोद्धरणनिरुपमनन्दरव—which occurs as an epithet of Yuvamahārāja Viṣṇugopavarman in I. A. vol. V. p. 50 at p. 51 and of Śiṃhavarman in the Pāṭila grant in E. I. vol. VIII p. 159 at p. 162.

1748. कालयुगाचारसङ्क्रमणोद्भवमिना ... धुवसर्मा in Gupta Inscription No. 10 pp. 44-45.

called *sandhyā* (that precedes each yuga) and the period called *sandhyāntā* (that follows each yuga) 12000 years, i. e. *Kṛta*, *Tretā*, *Dvāpara* and *Kali* extend respectively over 4000, 3000, 2000, 1000 years and *sandhyā* and *sandhyāntā* of these four extend over 400, 300, 200 and 100 years each (I. e. the *sandhyā* of *Kṛta* is 400 years and the *sandhyāntā* of *Kṛta* is 400 years and so on). But these are divine years. Each divine year is equal to 360 human years. Therefore we have to multiply 12000 by 360 to arrive at the number of human years in the four yugas (i. e. the figure is 4320000). The *Kṛtayuga* with its *sandhyā* and *sandhyāntā* comes to 1728000 human years, *Tretā* to 1296000, *Dvāpara* to 864000 and *Kali* to 432000. These four yugas are together called sometimes *caturyuga* (Manu I 71) or simply *yuga* also (Vanaparva 188. 27, Śānti 232. 29); 1000 of these four yugas constitute a day of *Brahmā*, which is called *Kalpa*. The night of *Brahmā* is of the same duration. At the end of a *kalpa* the universe is resolved into *Brahmā* (and this is called *pralaya*) and at the end of *Brahmā*'s night the world is created again. In one day of *Brahmā* there are 14 *Manus* and therefore each *Manvantara* is equal to about 71 *caturyugas* (1000 divided by 14). The life of *Brahmā* is 100, out of which half is gone and therefore the present is said to be the 2nd or latter half (*dhūtipa parārdha*) of the life of *Brahmā* and at present the *kalpa* that is running is called *Vārāha*. From the above it will be seen that, according to the *Purāṇas*, the universe has been created and dissolved many times and there have been numerous *Manvantaras* also (vide Manu I 80). The four yugas in various ways differ in their characteristics. *Kṛta* is so called because it is an age in which everything is fulfilled by every one and nothing is left to be done.<sup>1749</sup> The symbolic colours of the four yugas are respectively white, yellow, red and dark (Vanaparva 189. 32). In *Kṛta*, *Dharma* prevails in all its perfection and it stands with all its four feet (dharma being figuratively spoken of as *vr̥ṣe*,<sup>1750</sup> a bull, in Manu VIII. 16 and Vanaparva 190. 9) and it declines or deteriorates by a quarter in each of the following yugas (Manu I. 81-82 = Śānti 232. 23-24), so that in *Kali* only one quarter (or one foot) of *dharma* remains and *adharma* occupies three quarters. In *Kṛta* people are entirely free from diseases, secure all that

1749. कुर्वन्नेव न कार्यम् तस्मिन् काले पुनश्चने । वनपर्व 149. 11.

1750. कुले चतुष्पादसकलो विष्वाजोवापिचरितः । इषाः तस्मिन्निवो जने मनुष्ये वरत-  
र्द्धम् । वनपर्व 190. 9.



they desire and the length of human life is four hundred years, all of which decline by one quarter successively in the following three yugas (Manu I. 83 = Śānti 232. 25). The dharmas in each of the four yugas are different; *tapas* was the highest in Kṛta, philosophic knowledge in Tretā, sacrifice in Dvāpara and charity alone in Kali (Manu I. 85-86 = Parāśara I. 22-23 = Śānti 232. 27-28). Manu I. 85, Śānti 232. 27 and 261. 8, Parāśara I. 22 all have the same verse stating that the dharmas prescribed for man in each yuga differ.

In Kṛta, Tretā, Dvāpara and Kali the dharmas (that should be observed) are respectively declared by Manu, Gautama, Śaṅkha-Likhita and Parāśara (Parāśara I. 24). In Kṛta there was a single varṇa but at the end of Kali almost all will be śūdras (Brahma 229. 52, Matsya 144. 78). Parāśara (I. 25-28) points out other characteristics of the four yugas, which need not be detailed here. Manu IX. 301 and 302, however, indicate that the yugas are not watertight parts of Time. It is the king who can by his conduct introduce the characteristics of one yuga into another. Medhātithi on Manu IX. 301 explains that the king should not be misled into thinking that Kali is a historical part of Time and that he (the king) cannot therefore be Kali or Kṛta, but that it is the king's way of conducting himself that will produce the conditions of the several yugas among his people.

In Vanaparva 149. 11-38, Vāyu 32 and 57-58, Līṅga 39, Matsya 142-144, Garuḍa 223, Nārada-purāṇa (pūrvārḍha 41) and in several other purāṇas there are descriptions of the nature of the four yugas, which are passed over here. But it is important to see how the Great Epic and the Purāṇas describe the nature of Kaliyuga. Vanaparva chap. 188 and 190, the Yugapurāṇa chapter of the Gargya-saṃhitā (published in the J. B. O. R. S. vol. 14 pp. 400 ff. by K. P. Jayaswal), Harivamśa (Bhaviṣya chap. 3.5 ff), the Brahmapurāṇa 229-230, Vāyu 58 and 99. 391-428, Matsya 144. 32-47, Kūrma I. 30, Viṣṇu VI. 1-2, Bhāgavata XII. 2, Brahmāṇḍa II. 31, Nāradya (Pūrvārḍha 41, verses 21-88), Līṅga 40, Nṛsiṃha 54. 11-49 and several others present, often in identical verses, a very pessimistic, dismal and harrowing account of what will happen in the Kali age. One extract<sup>1751</sup> taken from the Vanaparva (188) is added at the end by way of sample, of which a summary is given below. All men will generally be liars; in

1751: Vide Appendix.





roads meet will be full of *natch* girls, and women will give up their chastity; cows will yield little milk; trees will produce few flowers and fruits and will abound in crows; brāhmanas will receive gifts from kings that are guilty of brāhmana murder and that falsely accuse others of grave sins; people in the various spaces will be dunned for alms by brāhmanas steeped in greed and ignorance, who falsely make a pretence of their being religious; householders afraid of the burden of taxation, guilty of thieving and subsisting on trade, will remain concealed under the false garb of ascetics; brāhmanas pretending to be brahmacārins will, through greed of wealth, fraudulently allow their nails and hair to grow; persons in the various stages of life, that observe false rules of conduct but are drunkards and indulge in incest, will desire mundane objects and the increase of flesh and blood; the sārāmas (forest dwellings) will be full of various heretical opinions and will extol the merits of food provided by others (out of charity); Indra will not send down rain at the proper season and all seeds will not put forth proper growth; people will take delight in killing and will be impure and abundant will be the fruit of adharma; whoever will then be acting according to his dharma may be regarded as having a short time to live, since there will be no dharma whatever (in Kaliyuga); people will sell goods mostly with false weights and measures and traders will be full of many tricks; the righteous will wither away, the sinful will prosper; dharma will lose its strength and adharma will be powerful; those who follow dharma will have short lives and will be poor, while those who give up dharma will have long lives and will be prosperous; in the sporting grounds of cities people will be sinful (or adulterous) and people will enter into transactions by sinful means; people, that have saved a little, will be puffed up with the pride of the rich; people with whom wealth was deposited privately through trust will mostly be ready to deny the deposit, shamelessly saying 'it was never so deposited;' the sporting grounds of towns and temples belonging to towns will be infested by beasts and birds that prey upon human beings; girls of seven or eight years will become pregnant and males of ten or twelve years old will have sons born to them; people will be bald-headed in the 16th year and there will be quick decline in the length of the lives of men; young man whose lives will be short will act like old people and old people will have the habits of the young; women acting contrary to their duty

will deceive worthy husbands, will be of bad character and will have intercourse with slaves and even beasts; wives of heroes will resort to other men and will be guilty of adultery even while their husbands are alive.<sup>1754</sup>

The dates of the composition of the Purāṇas not being beyond controversy, it would be difficult to point to a particular period as the time when the full-fledged theory of the yugas was developed. But this much can be stated with certainty that by the 4th century A. D. at the latest the theory had been completely developed. Āryabhaṭa<sup>1755</sup> (in *Kalakriyāpāda* 10) states that when three *pādas* of the yuga (i. e. Kṛta, Tretā and Dvāpara) and 3600 years more had elapsed, he was 23 years old i. e. (accepting the calculations current at present) in 499 A. D. Āryabhaṭa was 23 years old and so was born in 476 A. D. In his *Pañcasiddhāntikā* Varāhamihira<sup>1756</sup> (505 to 587 A. D.) summarises the data of several astronomical

1754. It would be interesting to compare the descriptions of Kali given in the Mahābhārata and the several Purāṇas. Some verses are common to several of them and the ideas are almost the same throughout. The principal counts in the indictment are that there will be śūdra and Mleccha kings, that heretical sects will predominate, that the ordered duties and privileges of the several castes will be turned topsyturvy and there will be great physical and moral decline. After Vanaparva chap. 183 there is an additional description in chap. 190 of what will happen in the Kali age, which appears, from the express words of Vanaparva 191. 16, to have been taken from the Vāyupurāṇa. So this chapter is a later interpolation. The verse अङ्गुलान् &c. occurs again in Vanaparva 190. 32 and also in Harivaṃśa (Bhaviṣṣaparva 3. 12), Brahmapurāṇa 230. 11, Matsya 47. 258. Two characteristic verses are: शूद्रदन्ता विद्वान्नाथ दुष्टाः काषायवासाः । धृष्टा धर्मं यदिपन्ति शस्त्रहृद्भोगीनिनः ॥ (अङ्गुराण 230. 13, वायु 53. 39, ब्रह्माण्ड II. 31. 39-60, Harivaṃśa, Bhaviṣṣaparva 3. 15) and देवराजैश्च चैवेव नानागामाजैश्च च । मनुचन्द्रा इषिषी न देवराजैश्च ॥ वनपर्व 190. 67. The first says that śūdras with white teeth and (professing to have) curbed their senses, with the head shaved and wearing ochre-coloured robes and maintaining themselves on false doctrines will propound dharma. This is a direct attack on Buddhist monks taken from the class of śūdras. The 2nd says that the earth will be covered with skeletons enshrining bones (of Buddha) and not with temples of gods. The idea about girls of 3, 6 and 7 being mothers occurs in Viṣṇupurāṇa VI. I. 41-42, Brahma 229. 41-42, Nāradiya Pūrvaṇḍha 41. 64 and elsewhere.

1755. मङ्गलद्वारां परिषदां स्मृतां वचनं सुभाषदाः । इषिका निशितैरभ्यासदेहं नमः जन्मलोभिताः ॥ काङ्क्षिपादा 10. This does not necessarily mean that he composed this work when he was only 23.

1756. Vide J. A. S. B. for 1912 pp. 275-278 for the date of Varāhamihira.



Siddhāntas of which Romaka is one, about which Brahmagupta remarks that the Romaka śiddhānta is outside the pale of smṛtis because<sup>1757</sup> it omits all mention of yugas, manvantaras and kalpas that have been regarded by the smṛtis as useful in measuring time. Kālidāsa<sup>1758</sup> in Raghuvamśa 15. 96 speaks of dharma as having only three feet (in Tretā) when Rāma made up his mind to depart from this world. No scholar will assign to Kālidāsa a date later than the middle of the 5th century A. D. Therefore the theory of yugas must be deemed to have been perfected long before 400 A. D. K. P. Jayaswal holds that the Yugaparāṇa chapter of the Garga-saṁhitā was composed about 50 B. C. (J. B. O. R. S. vol. 14 p. 399) and he is probably right.

At present it is the practice to hold Kali 5046 (expired) as equal to 1945 A. D. or *saka* 1867 or *śaka* 2001-2. But it appears that there were several views about the date of the beginning of the Kaliyuga. The exact starting point on the above computation was Friday, 18th February 3102 B. C. One view was that Kaliyuga was about to begin when the great Mahābhārata war was fought out.<sup>1759</sup> This view is expressed in the Aihole inscription which appears to equate the beginning of Kali with the Bhārata war and states that 3735 years (expired) from the Bhārata war are equal to 556 years of the *śaka* era.<sup>1760</sup> Āryabhaṭa knew this computation, since he says that he was 23 years old when three parts of the (great) yuga and 3600 had elapsed (Kāla-kriyāpāda, verse 10). Another view set forth in the Purāṇas is that Kaliyuga began when Kṛṣṇa finished his *auśtara* and went to heaven.<sup>1761</sup> This would put the beginning

1757. युगमन्वन्तरकल्पा जलपरिच्छेदकाः स्मृत्युक्ताः । जगन्नाथ रोमके ते स्मृतिपादो रोमकस्वरमात् ॥ बाणभट्टरसिद्धान्त 1. 13 q. by S. B. Dikshit (2nd ed. of 1931) in भारतीयवैयर्थ्यशास्त्र p. 153. बाणभट्ट flourished from 598 A. D. to at least 663 A. D.

1758. अस्मिन्नायमवतुर्गौणं बाहुनाकमपितरपुत्रि । रावणः क्षितिपते तस्यैव हविर्धर्मक्षिपाविव ॥ रघुवंश 15. 96.

1759. अन्तरे चैव संयाते कलिद्रापरधोरभूत् । समन्तपञ्चके द्रुक्षे कुरुपाण्डवसेनयोः ॥ भादि. 2. 13; मातृ कलिपुत्रं विद्धि । शल्य 60. 23; एतत्कलिपुत्रं नामाक्षिराज्यवपते नवपर्व 149. 26.

1760. विजयसु विमलचक्षुषे भारतद्रुषवादिताः । समाच्छातयुक्तैषु मनेष्वन्देषु पञ्चसु ॥ पञ्चाशत्सु कालै कलि वदसु पञ्चशतासु च । समासु समर्थासासु शकानामपि ध्रुवनाम् ॥ E. I. vol. VI p. 1 at p. 7.

1761. वसिष्ठहृष्यो दिवं वसतस्मिन्नेव तद्वा दिने । वसिष्ठः कलिपुत्रतरप संज्ञां निषेधत् ॥ वायु 99. 428-429, ब्रह्माण्ड III. 74. 241. The भाववत् XII. 2. 33 reads वसिष्ठं कलिपुत्रमिति वाहुः पुराविदुः. मत्स्य 273. 49-50, विष्णु IV. 24. 40 respectively read वसिष्ठं कलिपुत्रं वामनं तस्य मे हृष्टं and वसिष्ठं...तस्य संख्यां निषेध मे ॥ ब्रह्मपुराण 212. 8 has the same idea (in different words).

of Kaliyuga several years after the date arrived at on the first view.<sup>1762</sup> Vide Mausalaparva chap. 1. 13 and 2. 20 for reference to the lapse of 36 years before Kṛṣṇa's passing away. The Yugapurāṇa appears to make Kaliyuga start on the day Draupadī died (vide J. B. O. R. S. vol. 14 p. 400). Another view is that of Varāhamihira who says that the constellation of the Great Bear was in Maghā when Yudhiṣṭhira was on the throne and that that time is arrived at by adding 2526 years to the śaka year.<sup>1763</sup> This would place Yudhiṣṭhira in 653 of the Kali age (as calculated at present) and not at the end of Dvāpara and the beginning of Kali. The Rājatarāṅgiṇī 1. 56 quotes the Brhat-saṃhitā and holds that Kuru and Pāṇḍavas flourished in 653 of the Kali yuga (1. 51). Great efforts have

1762. Vide J. R. A. S. for 1911 pp. 479ff and 675ff about the Kaliyuga and its era; 'Five thousand years ago, the Mahābhārata war' a paper by Dr. D. S. Trivedi in Festschrift Kano pp. 515-525 in which after setting out many divergent views and criticising them, it is held that the Mahābhārata war was fought out in 3137 B.C.; 'Purāṇic date of Mahābhārata', a paper by Mr. M. Raja Rao in the Bulletin of the Ganganāth Jha Research Society, vol. II pp. 125-143, which mentions numerous dates suggested by various scholars. I am not at all convinced of the correctness of Dr. Trivedi's conclusions. In spite of the great learning that he brings to bear on the problem. Vide also his paper in 'Bhāratīya Vidyā', vol. VI (1945) pp. 117-120.

1763. आसन्नं महातु सुमनः सामन्ति पूर्वां बुधिशिरे दृष्टौ । नृद्वैविक्रमद्विभुतः सुक-  
वासतत्तत्र राज्ञश्च ॥ बृहत्संहिता 13.3. This is not a verse of Garga as some scholars assert. In 13. 2 Varāhamihira promises that he will dilate on the movements of the seven sages (ṣaṇṇicāra) according to the opinion of Vṛddhagarga. It appears that 13.3 is his own verse. Garga held the opinion that the Great Bear remained in one constellation for one hundred years. That is all. Utpalā quotes the verse of Garga, but it is in the Anuṣṭubh metre. It was believed by the authors of the Purāṇas and even by such astronomers as Varāhamihira that the constellation of the Great Bear remained in each nakṣatra for a hundred years. Vide Br. Sam. 13.4, Bhāgavata XII. 2. 27-28, Matsya 273. 40-44, Vāyu 99. 421-423, Viṣṇu IV. 24. 33. Mr. Velandī Gopal Aiyer in 'Chronology of Ancient India' (p.75) holds that 'saṁ-dvika-paṇca dvī' means 26 times 35 i. e. 910 years and that we should read 'māyākālā' or 'māyākālā' (p. 73) instead of 'śakāhālā' in Br. Sam. 13. 3 in order to correct the error of one mātrā in the 4th quarter of the verse. In this last he is in error; he forgets that, according to works on chandas-śāstra, a short syllable at the end of a pāda is deemed to be periodically long (and therefore the last syllable in Br. Sam. 13. 3 is long). Besides, he is not able to cite a single example to show why the usual rule of अङ्गानां सामानो मतिः should not be followed here also or that Varāhamihira elsewhere employs a similar method in a compound word.



been made by several scholars to meet this discrepancy by explaining the word 'śaṭ-dvika-pañca-dvīyutaḥ' (in the *Bṛhat-samhitā*) in various fanciful ways, which are far from satisfactory. There is no reason why *dvika* should not straightforwardly be taken in the sense of 'two',<sup>1764</sup> as the *Lilāvati* and *Br. Sūtri* 71. 5 itself do.

It is difficult to believe that the Śakakāla referred to in that verse is different from the Śakendrakāla or Śakabhūpakāla, which the *Pañcasiddhāntikā* (1.8) and the *Bṛhat-samhitā* (8. 20-21) make use of in several places. At least Varāhamihira gives no such indication. Mr. C. V. Vaidya in his 'Mahābhārata, a criticism' pp. 80-81 holds that the Śakakāla referred to in the verse 'āsan maghāsu &c.' is the era of Buddha's Nirvāṇa. There is hardly any warrant for this assumption. His interpretation of 'śaṭ-dvika-pañca-dvīyutaḥ' as meaning 2566 (and not 2526) is not bad and does not seriously affect the argument about the date of Yudhiṣṭhira. On that interpretation Yudhiṣṭhira would be placed in 2488 B. C. (instead of in 2448 B. C.). But there is no reason why the usual values of *ṣaṭ* (six), *dvika* (two) and other words should not be understood to be meant here.

The data contained in the Nidhanpur plates of Bhāskara-varman (*E. I.* vol. XII p. 65), when properly scrutinized, appear to favour the position of Varāhamihira. Those plates in settling out the genealogy of Bhāskara-varman start with Naraka, whose son Bhagadatta fought on the side of the Kauravas in the Mahābhārata war and was killed by Arjuna (vide *Draṇa-parva* chap. 29). Bhagadatta's son is said to have been Vajradatta. After Vajradatta his descendants ruled over Kāmarūpa for 3000 years and then Puṣyavarman, a scion of the Bhagadatta family, became king of Kāmarūpa. King Bhāskara-varman was 12th from Puṣyavarman and was a contemporary of Emperor Harṣa (first half of the 7th century A. D.). Taking an average of 20 years for the reign of each ruler, Puṣyavarman should be taken as having flourished about the beginning of the 5th century A. D. Adding 3000 years which are alleged by the plates to have intervened between Puṣyavarman and Vajradatta, we arrive at about 2500 B. C. as the time of Vajradatta and therefore approximately of the Mahābhārata war. This

<sup>1764</sup> The *हैलाकौ* (अष्टावक्रवचनं verse 262, Anand, ed.) reads द्विकाद-काण्डं विनाशकौ, where the com. says द्वयो द्विकः.

corresponds rather very closely with the statement of Varāhamihira who puts Yudhiṣṭhira's reign at 653 Kaliyuga (i. e. 2448 B. C.). On the other hand, if we assume that the Mahābhārata war was fought in or that Kaliyuga started in 3101 B. C., then Puṣyavarman who flourished 3000 years after the Mahābhārata war would have to be placed about 101 B. C. and there will be an interval of about 700 or 750 years between Puṣyavarman and Bhāskaraśarmā. A period of 700 or 750 years for 12 rulers would work at about 60 years for each ruler, which is a very improbable average. Therefore the Nidhanpur plates do not support the hypothesis that the Mahābhārata war was fought about 3101 B. C., but rather support the statement of Varāhamihira that it was fought about 2500 B. C.

Another epoch for the Mahābhārata war and the beginning of Kaliyuga is indicated by some passages of historic importance found in some of the Purāṇas. The Vāyupurāṇa (99. 4-15) and the Matsyapurāṇa (273. 36) say that from the birth of Parīkṣit to the coronation of Mahāpadma (Nanda) a period of 1050 years elapsed, while the Bhāgavata XII. 2. 26 assigns 1015 years for the same. There is some mistake in the Purāṇa texts here. The Matsya (in chap. 271. 17-30) enumerates the kings of the Bārhadratha dynasty of Magadha descended from Sahadeva, son of Jarāsandha, and states that the dynasty will rule (i. e. ruled) for a thousand years. Then chap. 272 (verses 1-5) speaks of five kings, who will be followed by the Śaiṣunāka dynasty, that together reigned for 360 years and the last king in which was Mahānandī (verses 6-13), whose son from a śūdra wife was Mahāpadma (272. 18). So if the years of these three dynasties are added we get the period of about 1500 years. This is supported by the Bhāgavatapurāṇa (IX. 22. 48 and XII. 1-2) and Vāyupurāṇa (99. 308-321), which latter says that 39 kings of the Bārhadratha dynasty will rule for 1000, then five Vitthotra kings for 138 years (Pradyota and others) and then the Śaiṣunāka (Śaiṣunāga in the Bhāgavata and in the Brahmāṇḍapurāṇa III. 74. 134-135) dynasty for 362 (in all exactly 1500 years). The same periods are given by the Viṣṇupurāṇa (IV. 23 and 24) and by the Brahmāṇḍapurāṇa III. 74. 121-135. Śrīdhara in his comment on Bhāgavata XII. 2. 26 states that the interval between Parīkṣit and Nanda is 1498 as the Bhāgavata holds that the Śaiṣunāga dynasty ruled for 360 years (XII. 1. 4-6). Therefore the proper reading in the Vāyupurāṇa or Matsyapurāṇa or the Bhāgavata should be 'pañcāśatottaram'



instead of 'pañcāśaduttaram' or 'pañcadasottaram.' Taking the interval between Parikṣit and Nanda to be 1500 years and holding as most modern scholars do that the Nandas flourished in the 4th century B. C., Parikṣit, the grandson of Arjuna, the Mahābhārata war and the beginning of Kalyuga would have to be placed in the 19th century B.C. Therefore there are so far three main different epochs for the Mahābhārata war viz 3101 B. C., 2448 B. C. and about 1900 B. C. All the three are well attested by evidence dating at least from about the 5th century A. D. One cannot dogmatically say that a certain tradition alone out of these three is the only correct one. All that one can say is that one prefers a particular tradition to the other two. Since the epoch of 1900 B. C. is supported by the Purāṇas in great detail by citing the names of the several kings and their regnal years I personally regard the epoch of 1900 B. C. for the Mahābhārata war as more probable than the other two. It is best to acknowledge one's inability to assign a certain date to the Mahābhārata war rather than twist plain words or ignore altogether inconvenient passages or put on them fanciful or far-fetched interpretations. The first desideratum is to prepare critical editions of the important purāṇas from the best mss. material. Even then it is doubtful whether unanimity among scholars can be secured. A scholarly beginning was made by Pargiter in his book 'The Purāṇa texts of the dynasties of the Kali Age' (1913). He compares the material available in the printed editions of several Purāṇas and Mss. on the subject of royal dynasties. One cannot or may not agree with many of the assumptions and inferences that he makes or draws, yet one cannot withhold admiration for his industry and method. For example, I cannot agree with him when he takes 'bhaviṣye kathitān' of the Matsyapurāṇa or 'bhaviṣye pāthitān' of Vāyu (99, 267) as referring to the Bhaviṣyapurāṇa. In many passages of the Purāṇas we have references to 'bhaviṣyajāna' (Brahmāṇḍa III. 74, 105), which simply means 'those who are conversant with sections on the future' contained in ancient works like the Mahābhārata.

It is not possible owing to limitations of space to enter into detailed examination of the theories of several scholars about the date of the Mahābhārata war. But one or two important matters will have to be referred to here.

Mr. Velandī Gopala Aiyer in 'The chronology of Ancient India' in chap. II. (pp. 51-104) examines the astronomical data

furnished by the Mahābhārata and relying on the far-fetched and wrong interpretation put by him on the words of the *Bṛhat-saṃhita* (quoted above) and on the fact that the Kollam era in Malabar appears to take 1177 B. C. as the starting point for Kaliyuga arrives at the conclusion that the Mahābhārata war took place in the latter part of 1194 B. C. This theory goes against all the three other starting points which are supported by comparatively ancient and authoritative evidence.

The information derived from the fragments of the work of Megasthenes on India are supposed to shed some light on this vexed problem. In one fragment (p. 115 of 'Ancient India as described by Megasthenes &c.') occurs the passage: 'From him (i. e. Bacchus) to Alexander the Great 6451 years are reckoned with three months additional, the calculation being made by counting the kings that reigned in the intermediate period to the number of 153'. An extract from Pliny makes out the number of kings to be 154. As against this we have the statement in the 'Indika' of Arrian (2nd century A. D., translated by McCrindle, p. 203): 'From the time of Dionysos to Sandrakottus, the Indians counted 153 kings and a period of 6042 years, but among these a republic was thrice established ..... another to 300 years and another to 120 years. The Indians also tell us that Dionysos was earlier than Heracles by fifteen generations and that except him no one made a hostile invasion of India'. This passage is of very great importance for one reason, viz. that it proves that in the 4th century B. C. there was a persistent Indian tradition which carried back Indian civilization and ordered government to 6000 years before the 4th century B. C. But there is great doubt as to what Megasthenes actually wrote and there is some divergence as to the number of years and kings also. Besides, this has no direct bearing on the date of the Mahābhārata war or the beginning of Kaliyuga, unless Heracles is taken to be Hari-Kṛṣṇa, as some scholars<sup>1765</sup> do. The account of Heracles (pp. 201-203 of McCrindle's work) agrees in some respects with the legends about Kṛṣṇa viz. that he was honoured by the Sourasenoi (Sūrasenas), an Indian tribe who possess two large

1765. Vide Mr. C. V. Vaidya's 'Mahābhārata, a criticism' pp. 75-76, where ignoring the figures of total years (viz. 6042 or 6451) he comes to the conclusion that Kṛṣṇa flourished about 3101 a. c. since 138 Kings between Heracles and Sandrakottus (i. e. Candragupta) may have ruled in all about 2760 years, taking 20 years as the average for each reign.



cities Methora (*Mathurā*) and Cleisobora and that Heracles had many wives; but then there are other anecdotes about Heracles which do not at all agree viz. his having a daughter Pandala with whom when she was only seven Heracles had intercourse for raising a mighty race. Here there is some confusion with the Pāṇḍavas and Kuntī or with the Pandyan kingdom in the South. Moreover, 6000 years for 153 or 154 kings is rather a very long period. It cannot be said that a king is only a unit of time in these computations (40 years on an average), since such Purāṇas as the Vāyu and the Matsya expressly mention the number of years that each dynasty held sway, the number of kings belonging to each dynasty and the lengths of the reigns of several kings. It is no doubt true that the details of the names of the several kings, the number of kings and the duration of their reigns do not always tally. It appears that the Purāṇas that contain historical material were recast at different times, e. g. the Vāyupurāṇa (99, 383) refers to the Guptas while the Matsyapurāṇa is silent about them. The extant Purāṇas cannot be supposed to have given imaginary details about historical dynasties, but they must have had before them older records or traditions. The Purāṇas do not appear to have invented names of new kings or given imaginary lengths of reigns. The authors surely knew that the total of the several dynasties between Parikṣit and Nanda did not square with the total of the lengths of the reigns of the several individual kings. But they gave both these without trying to solve the discrepancies as they wanted to record all the traditions they had got before them. The Purāṇas have a claim on our attention, but in the present state of our knowledge they cannot unfortunately form the basis of any certain or connected history and chronology of ancient times.

A few words may here be said about the attempts made to deduce the age of the Mahābhārata war from the astronomical references in the Epic.

The number of works and papers in which the dates of the Bhārata war and of Kaliyuga are discussed is very large. A few of them only are noted here. The late Shankar Balkrishna Dikshit in his exhaustive volume on 'the History of Indian Astronomy' (in Marathi, 2nd ed. of 1931) deals with this subject at pp. 107-127. Mr. C.V. Vaidya in 'Mahābhārata, a criticism, 1904' devotes one chapter (pp. 55-78) and appendix note V (pp. 180-190) to the date of the Mahābhārata war. He holds fast to the traditional

view that the Mahābhārata war was fought in 3101 B. C. Mr. N. Jagannatha Rao writes a book on 'the Age of the Mahābhārata war' (Bezwaḍa, 1931), in which he disputes the identity of Candragupta Maurya with Sandracottus mentioned by Megasthenes, holds that Sandracottus is the Gupta Emperor Candragupta, that the date of Candragupta Maurya would be about 1535 B. C., that the word 'Śakakāla' in the *Bṛhatsamhita* refers really to the era of the Persian Emperor Cyrus about 550 B. C. and that the Great War was fought in 3139 B. C. The work does not go deeply into anything and is rather superficial. There is a lengthy and interesting article by Mr. K. G. Sankar on 'some problems of Indian Chronology' in *Annals of the B. O. R. Institute, Poona*, vol. XII pp. 301-361 in which he seems to favour 1198 B. C. as the date of the Mahābhārata war. Mr. J. S. Karandikar, editor of the 'Kesarī' (Poona), contributed certain articles (in Marathi) which are now issued as a booklet (1939), in which he examines many of the astronomical references in the Mahābhārata and the Paurāṇic lists about the dynasties of ancient Indian kings and arrives at the conclusion that the Mahābhārata war was fought in 1931 B. C. Though I differ from him in important details, I think that the date arrived at by him appears to be one of the two probable or best authenticated dates among the several dates proposed by various scholars. Prof. P. C. Sen-Gupta contributed a paper to the *Journal of the Bengal Asiatic Society* in 1937, vol. III pp. 101-119, in which he discusses the date of the Mahābhārata war and arrives at the conclusion that the Bhārata war was fought about 2449 B. C. This also is a very probable date and has the authority of the tradition mentioned in the *Bṛhatsamhita* that the saka era is 2326 years after the era of Yuddhiṣṭhira. In *J. A. S. B.* for 1938, vol. IV pp. 393-413 Prof. Sen-Gupta again examines 'Bhārata battle traditions' and confirms the date 2449 B. C. already arrived at by him. Dr. K. L. Daftari delivered some lectures in the University of Nagpur on 'the astronomical method and its application to the chronology of Ancient India' which are published in book form (Nagpur, 1942). This work exhaustively deals with almost all the passages of astronomical importance contained in the Mahābhārata and is characterized by great industry, patient calculations and ingenious explanations of conflicting passages. His conclusion is that the Bhārata war was fought in 1197 B. C. Although one feels nothing but admiration for the author's great learning and acumen, it is not possible to agree with the date arrived at by him or with



the method and theories adopted by him. Apart from details one cannot accede to the following theories propounded by him viz. his division of the astronomical references into two groups, his assumption that a passage in the Dronaparva (chap. 184) about the rising of the moon at about 2 A. M. is an interpolation (because it does not square with his explanations of the other passages), his bold expedient of changing 'citram' to 'cailam' in Bhīṣma 3. 12 and his transposition of Śravana and Pūṣya in Salyaparva 54. 6, his taking 'angāraka' to mean Venus (and not Mars). Dr. Daftari's work was reviewed by Prof. Sen-Gupta in JASB for 1943, vol. IX pp. 221-228 and after submitting it to a searching analysis and calculations, the learned Professor arrives at the conclusion that he cannot accept Dr. Daftari's method, which is useless for all practical purposes. Prof. K. V. Abhyankar contributes an article to the Annals of B. O. B. I. for 1944, vol. XXV, pp. 116-136 on 'the date and time of the Bhārata war', in which he takes into account only the material available in the Epic itself and bases his conclusions on the principle of following the voice of the majority. He furnishes a useful table in an appendix that shows at a glance some of the important astronomical passages of the Mahābhārata with their interpretations given by the commentators Arjunamiśra and Nilakanṭha and by Mr. Karandikar and himself and finally gives his opinion that the traditional view of the date (3101 B. C.) is approximately correct. It appears that he had not, when he wrote the article, the work of Dr. Daftari before him nor Prof. Sen-Gupta's devastating criticism of it. It will be apparent from the above that the attempts to settle the exact date of the Mahābhārata war on the strength of the astronomical materials contained therein are dismal failures. Hardly any two scholars agree on the exact dates so arrived at, which range from 1193 B. C. to 3101 B. C. and even beyond. There are many reasons for this disappointing result. In the first place, several of the criteria mentioned in the epic are hopelessly inconsistent, as will be made clear a little below by a few examples. Further, several scholars assume that the epic was composed within a short time (about three years according to Ādiparva, 62. 52, or ed. chap. 56. 32.) after the war. Many (including my humble self) cannot subscribe to this view. Besides, we are totally in the dark about the details of the system of the calendar generally adopted at the period of the war. Many suppose that it largely resembled the rules contained in the Vedāṅga Jyotiṣa (of the Rgveda). There is no unanimity on the question whether the months

ended with *amāvāsyā* (i. e. whether they were *amānta*) or whether they ended with Full Moon (i. e. whether they were *pūrṇimānta*).<sup>1766</sup> That a *pūrṇimānta* month was in vogue in Vedic times is beyond dispute. For example, Tai. S. states that Pūrva Phalguni is the last night of the year and Uttara Phalguni is the month (i. e. beginning). Similarly Tai. S. VII. 4. 8. 2 declares that the *citrāpūrṇamāsa* is the month of the year; while Śān. Br. IV. 4 declares that the Phalguni Paurṇamāsī is the *mukha* of the year. The author or authors of the Mahābhārata, in describing the evil portents of an impending tragic or catastrophic event, often assemble together (as in Udyoga 143.5-29, Bhīṣma 2. 16-33) all of them irrespective of the fact whether some of them are possible in the very order of nature. For example, it is stated that Arundhati went before Vasistha (Bhīṣma 2. 31), that a mare gave birth to a cow calf and that a bitch gave birth to a jackal (Bhīṣma 3. 6) and that images of gods trembled, laughed and vomited blood (Bhīṣma 2. 26, which may be compared with Bhatsamhitā 45. 8 and the verses of Garga quoted by Utpala thereon); it is several times said that the Moon and the Sun are seized (i. e. eclipsed) at an unusual season (*aparāyṇi*) or simultaneously by Rāhu (vide

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1766. That the months in North-west India were *pūrṇimānta* in the Kharoṣṭhī records drawn up in Kaniska's era is shown in E. I. vol. 18 p. 266 and E. I. vol. 19 at p. 10. Apatārka (p. 421) quotes a verse from *महापुराण* 'अथपुरुषरूपमेतत्तु आर्द्रं कार्यं द्विमे द्विमे' and remarks that Bhādrapada dark half is in that verse said to be the dark half of Āśvina. In the Bhaviṣya-purāṇa (Uttara-parva, chap. 132, 17) the Full Moon of Phalguṇa is said to be the end of the month' (किमर्थं द्वाविंशत्यस्तु धौर्मसस्या जगद्देन । उभयो जायते लोके ग्रामे ग्रामे दूरे दूरे स) . In the Matsyapurāṇa (159. 4-6) it is said that Skanda and Viśākha were born on the 15th of the dark half of Caitra, that in the bright half of Caitra itself on the 5th Indra made one boy out of the two and on the 6th crowned him as Lord. This shows that in the Matsya Caitra was *pūrṇimānta* and not *amānta*. When the month is *pūrṇimānta*, the first fortnight ending with *amāvāsyā* is assigned to a month which is one month in advance of the *amānta* reckoning i. e. what is Kārtika dark half with *amānta* reckoning becomes Mārgaśīrṣa dark half with the *pūrṇimānta* reckoning. On Jai. VI. 5. 31 Sabara quotes a Vedic passage about *मृगमघ्न* 'पुरस्तत्पौर्णमास्याश्चतुर्ले दक्षिण्य । सप्तमुत्तं वैशाखीर्णमासी संगमरर्य वा चैत्री पौर्णमासी', which seems to indicate that the year began with the Full Moon of Caitra and that the *pūrṇimānta* reckoning was not unknown.



Bhṣmaparva 3, 28 and 32-33 and Āśvamedhikaparva 77, 15).<sup>1767</sup> Further, these very verses state that the eclipses of the Sun and the Moon took place on the *same day* and on the 13th and in the same month. Dr. Daftari interprets 'ekāhā' as meaning on the same week-day and 'on the 13th tithi' (pp. 5-6 of his work) calculated according to the wrong method of those days. It is extremely doubtful whether week-days had been known or named at the time of the Bhāṛata war or even at the time of the composition of the Epic. It is too much to assume that the astronomers of the Mahābhārata war days, while they could predict eclipses and state accurately the position of the planets, were so clumsy as to allow a mistake of two *tithis* to occur in their calendar with respect to the occurrence of a solar eclipse. The words in Bhṣmaparva 3, 28 and 32-33 appear to be a mere exaggerated statement of portents. If real observed eclipses are meant they would have to be taken in the order of the words in the text, viz. first an eclipse of the Moon (on Kārtika purnimā) and then an eclipse of the Sun (on Kārtika amāvāsyā) and further it must be assumed that the dark half of Kārtika contained only 13 days. Dr. Daftari (pp. 44-46 of his work) holds that first there was a solar eclipse on Āśvina amāvāsyā, then a lunar eclipse and then again a solar eclipse. In that case we should expect the order to be 'sūrya-candrau' and not 'candra-sūryau'. Besides, hardly any other scholar holds that there were three eclipses one after another. Therefore, it is hardly possible to say with certainty that the author accurately states astronomical facts observed by him or even traditionally handed down as definite facts and does not draw on his own imagination about the portents or does not exaggerate

1767. चन्द्रसूर्ययोर्बौ भवती एकाह्ना हि त्रयोदशोदः । अपर्वणि प्रहे पातौ वनासेतव-  
मिच्छतः ॥ चन्द्रसूर्ययोर्बौ भवती एकनाशी त्रयोदशीपः । अपर्वणि प्रहेर्षती वनाः सख-  
दिवपतः ॥ मीमांसर् 3, 28, 32. The cr. edition of the Mahābhārata gives only  
the first of these two verses, Utpala in his com. on Bṛhatsaṃhitā 3, 26  
reads एकनासे त्रयोदशः. The words वनाः संखपदिवपतः make it quite clear that  
eclipses and the fortnight of thirteen tithis are taken as very evil omens.  
Similar words occur in Bhṣma 3, 12 and 13 quoted below in note 1779. In  
Bṛhatsaṃhitā 3, 6 it is said that a *graha* called Tvagṛ makes the orb of the  
Sun look dark even when there is no parva (amāvāsyā). Utpala quotes on  
the same a verse of Parāśara 'अपर्वणि वनाङ्गुली लघु नाम महाघ्नः । आनुषोति  
वन्द्यवामः सर्वलोकाविपन्नये ॥ There is no doubt whatever that the writer  
of Bhṣma 2 and 3 is more concerned with chronicling evil omens than with  
setting out accurate astronomical and other data observed by him personally  
or even by others.

as a rhetorical device. In *Bṛhatsamhita* 5. 26, 97-98 Varāhamihira states the evil consequences if a moon eclipse precedes or follows a sun eclipse in the period of one fortnight.

Most of the important astronomical details will now be set out from the time when Lord Kṛṣṇa is said to have started as a peace-maker to the Kauravas. In *Udyogaparva* 83. 6-7<sup>1768</sup> it is said that Kṛṣṇa started in the month of Kārtika (Kāumudī māsa) at the end of the śarad season and about the advent of winter, when the moon was in Revatī nakṣatra and on maitra mahūrta. Āśvina and Kārtika are at present said to form the season of śarad, and Mārgaśīrṣa and Pauṣa form hemanta. This verse itself presents a difficulty. On the Full Moon day of Kārtika, the moon is in Kṛttikā nakṣatra and the moon would be in Revatī three days before i. e. on or about the 12th of the bright half of Kārtika. If we take this along with the words 'at the end of śarad' it follows that the month was pūrṇimānta; otherwise (i. e. if the month were amānta) it would be highly improper to say that the 12th of the bright half of Kārtika was at the end of Śarad. After Kṛṣṇa failed in his mission he returned to the Pāṇḍavas (for all of which we must allow a few days after the 12th of Kārtika śukla) and reported what Duryodhana and he himself said. Two of the statements reported by him are very material. Duryodhana said to his allies: 'March towards Kurukṣetra (for battle); to-day the moon is (in) Pusa nakṣatra'.<sup>1769</sup> If Kṛṣṇa started on his mission when the moon was in Revatī (on the 12th of the bright half of Kārtika), then these above words must have been uttered in his presence on or about the 5th of the dark half of Kārtika (or of Mārgaśīrṣa if the month was pūrṇimānta). Another important statement is that Kṛṣṇa in his conversation with Karna (whom he had tried to win over) stated to him: 'this is a mild month in

1768. मित्रे सुपूर्णे संपाते दृष्टाद्येयि विषाकरे । कौमुदे मासि रेवतीं जगद्वन्ति विषादमे ॥  
उद्योगपर्वे 83. 6-7. 15 mahūrtas of the day and 13 of the night are referred to even in the *satapatha-brāhmaṇa* X. 4. 3. 18, 25, 27 and the *śaṭtīrīcākhya* (III. 10. 1.1) mentions the names of the 15 mahūrtas of the day (such as Citra, Ketu &c.). In the *Kumārasmābhava* VII. 6 the maitra mahūrta is mentioned in connection with ceremonies preceding marriage. The commentators explain maitra as the 3rd mahūrta after sunrise. In the *Atharva Jyotiṣa* fifteen mahūrtas of the day are enumerated of which the first three are Rādra, Śveta and Maitra.

1769. आज्ञापयन्त्य राज्ञस्तान् पार्थिवान्दुष्टयेततः । वषाढं च कुम्भं च दुष्पयोयि दुःखं दुःखः ॥ उद्योग 150. 3.



which fodder and fuel can be easily had, which is neither too hot nor too cold; on the 7th day (from today) there will be amāvāsyā; battle may be joined on that day; they regard it as having Indra for its (guardian)<sup>1770</sup> deity'. Therefore this must have been said on or about the 8th of the dark half of the month. But what was the name of the month? If the reckoning was pūrṇimānta, the month must be Mārgaśīrṣa, but if the reckoning was amānta, the month must be Kārtika. The words 'this month' taken along with Udyoga 83. 6-7 would indicate that the month meant was Kārtika. Further, Indra was the deity of Jyesthā nakṣatra and the amāvāsyā (as stated in Udyoga 142. 16-18) had Jyesthā nakṣatra. In modern times this is possible on Kārtika Amāvāsyā, while there cannot be Jyesthā nakṣatra in modern times on Mārgaśīrṣa amāvāsyā, but only on or about the 13th of the dark half of it. But this passage itself (Udyoga 142. 16-18) is in conflict with Śalya 35. 10 where Kṛṣṇa says: 'the Kauravas do not act up to my words, being driven to do so by the Time Spirit; O! descendants of Pāṇḍu, go out (for battle) together with me when the moon is in Pūṣya'. If the moon was in Jyesthā on amāvāsyā when Kṛṣṇa had proposed to Karna that the war should be begun, this passage of Śalyaparva would put the beginning of the war 16 or 17 days after Kārtika amāvāsyā, which is not warranted by any other passage and which no scholar puts forward. In Udyoga 143. 11 it is stated,<sup>1771</sup> 'the spot on the moon has turned away (disappeared) and Rāhu approaches the Sun.' The exact meaning of the first quarter is not quite clear. Some interpret it to mean that 'an eclipse of the Moon has already taken place'. The moon looks beautiful with the spot thereon (compare Śakuntala I 'malinamāpi himānāś lakṣmī lakṣmīm tanuḥ'). The disappearance of the spot might have been looked upon as an evil portent. Even supposing that the first quarter refers to an eclipse of the moon, it does not matter much. The second quarter states that an eclipse of the Sun was expected when Karna addressed these words to Kṛṣṇa, the envoy of the

1770. सौम्योऽवर्तते नामः युवापयवसंघतः । ... निष्पद्यते रजवत्तोदो नात्युष्म-  
सिधिरः शुक्रः ॥ सतमाश्चरन्ति दिवसाद्भुततया भविष्यति । संघातो युग्मवत् तयोः ताम्रा-  
शकृदेवताम् ॥ उद्योग 142. 16-18. श्रीलक्ष्मण explains 'संघातः संघातसाधनकलापः  
युग्मवतामेकौयुवावलिङ्गताम् । संघातारम्भस्तु दिवसम् एवेति वक्ष्यते ।'. न कुर्वन्ति वचो मया  
कृतः कालनेतिहाः । निर्व्यासं वाणवेष्टाः युग्मेण सज्जिता मया ॥ शल्य 35. 10.

1771. सौम्य एव तस्य स्वावृत्तं राहुरर्कपथेति च । दिव्योत्कः पतन्वेताः सन्निर्वाता  
सकम्पनाः ॥ उद्योग 143. 11. Almost these very words occur in श्रीमत् 2. 32 (स्वावृत्तं  
तस्य सौम्यं भविष्यति महद्भयम्) and in श्रीमत् 3. 11 (अर्कं राहुरप्येति च).

Pāṇḍavae. Later on in Bhīṣma 2.23 it is stated<sup>1772</sup> that the Moon had become devoid of brightness, was without its spot on the Full moon day of Kārtika and assumed the colour of fire while the sky retained its original hue; so that if there was an eclipse of the moon it was on Kārtika Purnimā and an eclipse of the sun was yet to take place. On the whole, therefore, one may assume, though not without hesitation, that the months were *amānta*, that possibly there was an eclipse of the moon on Kārtika Full Moon when Kṛpā had gone as a peace-maker and that there was a solar eclipse on the *amāvāsya* of Kārtika just about the time the war began. In Salyaparva 56.10 we again meet with the words (at the beginning of the mace duel) 'Rāhu swallowed the Sun at an unusual season'. This passage and Āśvamedhika 77.15 (Rāhur-agrasadādityaṁ yugapat somamēva ca) rather suggest that the eclipse of the sun at an unusual time had become a stock example of an evil portent without the actual occurrence thereof. The words in Salyaparva refer to the last day of the war before the mace duel between Duryodhana and Bhīma and the passage says that Rāhu seized the sun and there was an earth-quake also. Hardly any one (except Dr. Daftari) holds that there was another eclipse on the last day of the war, when just before the war there already had been an eclipse on Kārtika *amāvāsya*.

As to the exact *tithi* and *nakṣatra* on which the Great War began, there are many conflicting statements. In the Bhārata-sāvitrī it is stated that the Bhārata war started in the first month (i. e. Mārgaśīrṣa) of Hemanta on the 13th of the bright half when the moon was in the nakṣatra presided over by Yama (i. e. Bharanī)<sup>1773</sup>. The Bhārata-sāvitrī is no part of the

1772. अहोरात्रं तमसा हिमः पौर्णमासी च कार्त्तिकी । चन्द्रोऽपुष्टिप्रवर्णश्च समर्णः (v. 1. पञ्चमर्षे-) समस्तर्षे ॥ भीष्म 2. 23.

1773. The following verses of the भारतसावित्री are material for the days of the important events of the war: 'हेमन्ते पश्चिमे नामे शुक्लपक्षे चर्षोदशी । पञ्चमे भारते दुर्द्धे मध्याह्ने चमर्षस्ततः ॥ कालद्युष्मार् निहतो भीष्मः कुण्यपक्षे च सप्तमी । अहोरात्रं चैव सौमद्वौ नभस्यो च चतुर्दशः । दशम्यां भगवत्सु महापुङ्गे निपतितः । एतादृशमभरणात् हतो वीरो यदोक्तचः । ततः पञ्चतप्तमये विराट्पुण्ड्रौ हतौ । द्वादश्यां चैव मध्याह्ने द्रोणाचार्यो हतः ॥ त्रयोदश्यां तु मरणाद्धे वृषसेनो निपतितः । चतुर्दश्यां तु पुनर्हि रणे दुर्योधनो हतः । ... अस्माकं धर्मदुष्टेण शत्रुो मर्द्धोपिणो हतः । ... अस्माकमभरणात् तु राजा दुर्धनो हतः । ... अस्माकमेव वामिर्ण्यो द्रोणिना निहतस्तदा । धृष्टद्युम्नः शिखण्डी च द्रोणदाः पञ्च चालकाः । (set out at the end of हरिर्वा in the Cītrañilā edition). There are some statements here that are opposed to the text of the Mahābhārata. Abhimanyu



Mahābhārata, yet it has some traditional value, being probably earlier than all the commentators of the Mahābhārata and later than the text of Sauti. In conflict with this passage of the Bhāratasāvitri we have the words of Udyoga 142. 18 (quoted above) where Kṛṣṇa says to Karna that battle may be joined on amāvāsyā when the moon is in Jyēṣṭhā. The Mahābhārata itself states that after the disposition of the vast armies were made and commanders were appointed, Duryodhana called Uśaka and sent him to the Pāṇḍavas to inflame their feelings with the words<sup>1774</sup> (Udyoga 160. 93) 'the worship of steel (weapons) has been performed, the site of Kurukṣetra is dried up (has no mud), your horses are well fed, warriors are hired by you; fight tomorrow'. This Lobābhāhāra (or-sāra) is the same as the rite of *nirājanā* (according to the Amarakośa) or is performed immediately after *nirājanā* (for which see pp. 230-231 above). Kāuṭilya (II. 30 p. 135) prescribes a *nirājanā* rite at the start of an invasion and when two seasons meet. So a *nirājanā* rite on Kārtika amāvāsyā would be most appropriate (both because a battle was to be begun and because at the end of Kārtika the season of Śarad ended). The Bṛhat-saṃhitā (43. 1-2) prescribes a *nirājanā* rite for horses, elephants and men on the 8th or 12th of Kārtika bright half or on the 15th of Kārtika (Full Moon or *amāvāsyā*). It is extremely doubtful

(Continued from the last page)

was killed on the third day after Drona became commander-in-chief. It may be noted that Nīlakaṇṭha explains पण्डितम् differently as meaning Mr-gadma which has a double duty as its presiding deity. It may be noted that this text of the भारतसावित्री as printed is not quite reliable, since बीरकपट्ट in his commentary on अथ 17. 2, reads 'अर्जुनेन हतो भीष्मो मापमासेऽस्मिताहमी' for 'कात्यायनो ... सप्तमी' and 'अर्जुनस्य तु मरणात् मापमासो नियमितः' for 'द्वितीयं ... रणे हतः'. If these readings be accepted it follows that the Bhāratasāvitri implicitly recognizes the existence of a *tithikṛpaya*, since Drona is there said to have been killed on the 13th tithi of dark half when the epic itself says that he died on the 15th day after the battle began. As the war commenced on the 13th of bright half, there would be 16 days on 13th of dark half.

1774. लोहाभिहारो निर्जितः कुरुक्षेत्रकर्मम् । पृथक्तेभ्यः सुता गोपाः स्त्री पुत्रवरः सकोटयः ॥ उद्योग 160. 93. About this, अमरकोश says 'लोहाभिहारोऽथयुधो राज्ञो मीराजने तिथिः' (v. 1 नीराजनादिभिः 1.) The निमित्तम् of रघुनन्दन quotes (Jivananda p. 33) a passage from the Devipatāna that on the 6th of Caitra Śanda is to be worshipped and it is called स्कन्दपूजे. The निर्णयसिन्धु II (no मार्गशीर्षकृत्य) says 'मार्गशीर्षशुक्लपक्षे चम्यापक्षेति महापक्षे तु अतिदूराः । ... इदमेव स्कन्दपूजे.'.

whether Mr. Karandikar is right in saying that Lohābhīhāra (or-sāra) refers to Skandasashti. In the first place, the worship of weapons can be done at any time, particularly when a battle is to be commenced. In the second place, it is not necessary to postulate the lapse of six days and more for the sending of Ulūka and his return from the time when Kṛṣṇa said that battle may be begun on amāvāsya. The armies had taken up opposite positions on the field of Kurukṣetra and Ulūka could have come and gone in a day or two. Further, we have no evidence that Skanda-sashti was performed in northern India in Mārgaśīrṣa, though very late works composed by *dharmapūjyas* like the Nirṇayasindhu say that Skandasashti is the same as Campāsashti in Māhārāṣṭra and is observed on the 6th of Mārgaśīrṣa. Raghunandana quoting Devīpurāṇa places Skandasashti on Caitra 6th of the bright half and is supported by the Matsyapurāṇa quoted above in n.1766. There is no reason why the actual fight should commence so late as the 13th day of Mārgaśīrṣa (or even 11th as Mr. Karandikar suggests) when Kṛṣṇa said that it should be joined on amāvāsya. It is quite possible that the war began on or about Kārtika amāvāsya. The observance of 'lohābhīhāra' does not lead to the certain inference that the war was not begun till several days after the 6th of the bright half of Mārgaśīrṣa. Similarly, Mr. Karandikar says that the moon is ordinarily in Bharani on the 11th or 12th of the bright half of Mārgaśīrṣa. It may be so. But it is possible to have the moon in Bharani even on the 13th. I am inclined to hold that the Bhāratasāvitṛī dates of the beginning of the war embody a different tradition altogether from the one contained in the Mahābhārata itself. The Bhāratasāvitṛī is silent about nakṣatras on which the principal events of the war took place except at the commencement of the war. It mentions no *tithikṛpā* or *tithirādhī*. Kṛṣṇa sends a message with Ulūka to Duryodhana (Udyoga 162, 57) 'tomorrow you will be seen' (in your true colours) and Arjuna does the same (Udyoga 163, 14).

The Mahābhārata nowhere states quite explicitly the *tithi* or *nakṣatra* on which the battle actually commenced. We have to rely upon various indications to arrive at the *tithi* or *nakṣatra*. Balarāma could not bear to see the fight between Duryodhana and Bhīma, both of whom were his pupils in mace-duel and went on a pilgrimage (Udyoga 157, 33-35 and 158, 39). Balarāma returned on the 18th day of the war and (in Śalya-paṭha 34, 6)



he remarks, 'it is 42 days since I left (on a pilgrimage); I started when the moon was in Pusya and I have come here again on Śravaṇa' <sup>1775</sup>. In Śalya 35. 13-14 it is stated that Balarāma went to the river Sarasvatī on pilgrimage on 'malira-nakṣatra-yoga' (i.e. when the moon was in Anurādhā). This conflict may be resolved by holding, as Nilakaṇṭha does, that Balarāma left the Pāṇḍavas on Pusya, reached the Sarasvatī on Anurādhā and returned on Śravaṇa. If we follow Śalya 34.6 the war commenced when the moon was in or near Mṛgaśīrṣa (18 nakṣatras before Śravaṇa). This would be in direct conflict with a passage in Bhīṣmaparva 17.2 that <sup>1776</sup> 'on the day of battle the moon was in the province of Maghā' and also other passages that will be indicated later on. This last passage should ordinarily mean that the moon was near Maghā. Mr. Karandikar looks upon Śalya 34.6 as an interpolation and takes Bhīṣma 17.2 to mean that the moon was in an inauspicious nakṣatra of the category of Maghā. This would suit Bharatī but not Rohiṇī or Mṛgaśīrṣa. His meaning is far-fetched and he does not explain why Bharatī was not directly mentioned in the Epic, when in several other places the epic does mention directly the nakṣatra concerned. His explanation gives the go-by to the 13th *śloka*. Dr. Daftari boldly asserts that we must transpose the nakṣatras (in Śalya 34. 6) and read 'śravaṇa samprayātosmi puṣyena punarāgataḥ'. If we once resort to these methods followed by these two learned writers, there is no knowing where one should stop. There are scholars who might with equal or greater plausibility claim that most of these astronomical references are either of very late date or are interpolations (vide Vaidya's 'Mahābhārata' p. 71). Similarly, if we once concede that we are at liberty to change readings to suit our theories even in the total absence of all manuscript evidence, then there is no sure foundation on which we can build. The Mahābhārata passages have a tradition of centuries behind them. We must, in the absence of good mass evidence to the contrary, either accept *them all* and try to explain them or we must give up the job of reconciling them as a hopeless tangle and rely on other evidence to arrive at the date of the

1775. चत्वारिंशद्वार्षाभ्यं द्वे च मे मितुस्तथ वे । पुष्येण संप्रयातोस्मि अरणे पुनरागतः । शल्य 34. 6.

1776. महाविषयः सोमस्तद्धिने पक्षपक्षः । दीप्यमानश्च संप्रेतुर्विष मत् महाययाः । नीम 17. 2. नीलकण्ठ explains: मया विषये महायं तत्र विषयो देशः पितृलोकास्तथा सोमः ।

Bhārata war as best as we can. We saw above that Jyesthā was the nakṣatra on Kārtika amāvāsya and, if the war began then, the nakṣatra on the 18th day from then would be Pusa. Nilakanṭha, following the Mīmāṃsā rules of interpretation, holds that the concluding passage (*upasaṃhāraśloka*) is superior in strength to passages that occur at the beginning of a work, that the passage in Śalya 34. 6 is the dominant one and other conflicting passages must be either brushed aside or explained away in conformity with Śalya 34. 6 and gives an explanation of 'Maghaviṣayagaḥ somaḥ' which is quite unsatisfactory. Dr. Daftari also holds, relying on Atharva Jyotiṣa, that the passage means 'the moon was in Mūla' (p. 27 para. 62-65 of his work 'Astronomical method' &c.). The explanation is ingenious but one fails to see why this round-about way was resorted to and why the text did not simply say 'mūlanakṣatragaḥ somaḥ', which violates no metrical requirements. In Anuśāsana parva (167. 26-28) Bhīṣma, while on the bed of darts, states:<sup>1777</sup> 'the sun has turned (towards the north): 58 days have passed by since I laid myself down on this (arrow bed). This is the mild month of Māgha that is now current, three parts of it remain and this fortnight should be *śukla*'. Bhīṣma was struck down on the 10th day of the war; so 67 nights had passed from the day when the war began to the day in Māgha on which this was uttered. The difficulty is how to connect 'tribhāgaśeṣaḥ', whether as an adjective of 'māsa' or of 'pakṣa'. If we take it in the first way, these words were uttered on 8th of Māgha śukla: if we take it as an adjective of 'pakṣa', then they will have to be taken as uttered on the 4th of the bright half or on the 4th of the dark half which may be regarded in its astrological effects as equal to *śuklapakṣa* (though the tithi itself is in the dark half). If the words were uttered on the 8th of Māgha śukla, the Bhārata war began on Kārtika amāvāsya (which will be in consonance with Udyoga 142. 18 quoted in n. 1770). The passage in Anuśāsana (167. 26-28) is supported by two other passages. After the war was over, Yudhiṣṭhira went to the capital and stayed there for 50 nights and when he found that the Sun had started on its apparent northward path (*uttarāyana*) he came to Bhīṣma (Anuśāsana 167. 5). In Sānti-parva 51. 14 Kṛṣṇa says to Bhīṣma: 'You have yet to live 56 days.' Nilakanṭha, who takes Śalya 34. 6 as the dominant passage, puts a

1777. अद्य जातं रात्रिः शयानस्थाय मे भवति । ... माघेयं समुद्यतो मासः सौम्यो दुषितिरिति । विनामाघेयः पक्षोऽयं शुक्लो भवितुमर्हति ॥ अनुशासन 167. 26-28.



most far-fetched construction on the word 'astapañcāsatam', which he takes to mean 'one hundred minus 58' i.e. 42 nights and explains 'pañcāsatam sat ca' as equal to 30. This shows to what straits commentators are reduced when conflicting passages have got to be explained away. One more indication about the *tithi* on which the war commenced is afforded by Dronaparva chap. 184, where it is stated that a grim fight went on till midnight when Ghaṭotkaca was killed, that the fatigued armies then snatched some sleep, that then the moon rose at about 2 A. M. (verse 46) and that the fight was then resumed<sup>1778</sup> (chap. 186. 1 'tribhāgamāstraśeṣyāṁ rātryaṁ yuddham-avartata'). This description of moonrise shows that Ghaṭotkaca was killed on or about the 11th of the dark half. We know from the Mahābhārata itself that Ghaṭotkaca was killed on the night of the 4th day of Droṇa's command or on the 14th day after the war began. This would establish that the war began on the 12th or 13th of the bright half and ended on the 14th of the dark half or on amāvāsyā of Mārgaśīrṣa. Dr. Daftari holds that this description is an interpolation.

If we try to find out the *nakṣatra* on which the war began, we have one sure criterion in Śalya 34. 6 viz. that the war ended on Śravana nakṣatra when Balarāma returned from pilgrimage. Now the moon cannot be in Śravana at all in Mārgaśīrṣa dark half, but may be in it on the first or 2nd of the bright half of Pausa. So between the *tithi* and *nakṣatra* as disclosed by the Mahābhārata itself there is a slight discrepancy of a day or two. There is another way of looking at the data. Bhīṣma was waiting for uttarāyana to begin and we know that he passed away on the 59th day after he was mortally wounded on the 10th day of the war. Therefore, a period of 67 days (58 nights of his lying on arrow-bed plus 9 nights of the battle when he slept on his usual bed) elapsed between the beginning of the war and the beginning of Uttarāyana, which undoubtedly occurred in Māgha in that year (as Anuśāsana 167. 28 expressly states). The real difficulty is to find out the *tithi* of the commencement of Uttarāyana. But if we accept the approximate *tithi* and *nakṣatra* (as stated above) of the end of

1778. विमाममवशेषात् राक्षसं बुद्धमवर्तत । कुलपतिं पाण्डवानां च संवृतात् विजितं ॥ इति 186.1. श्रीकृतार्थ explains 'संवृतावयवविजितं', तत्र पूर्वोदयोत्तरं यदोदयं द्रोणस्य मरणः ॥ He supposed that Ghaṭotkaca was killed on the 12th of the dark half.

the war (i.e. Mārgaśīrṣa amāvāsyā or 1st of Pausā and Śrāvana nakṣatra), uttarāyana began 49 days thereafter i. e. on or about the 4th of the dark half of Māgha. According to the Vedaṅga-jyotiṣa, 4th of the dark half of Māgha is one of the tithis on which uttarāyana may begin (vide Dikṣit's work pp. 73, 91). How scholars accept one of the data and reject others is well illustrated here. Acc. to Śalya 34. 6 the war ended on Śrāvana (and so should have begun when the moon was in Mrgaśīrṣa). Acc. to the Bhāratasāvitri the war began on Bharaṇi and on the 13th of the bright half of Mārgaśīrṣa and ended on Amāvāsyā (and therefore the nakṣatra was Mūla or Pūrvāṣāḍhā). Arjunamīra gives up the nakṣatras and sticks to the tithis. Mr. Karandikar gives up the express verse about Śrāvana (and regards that whole chapter as an interpolation), he gives up the 13th tithi of the beginning of the war as given in the Bhāratasāvitri, holds that the war began on 11th instead and sticks fast to the Bharaṇi nakṣatra given in the Bhāratasāvitri. Dr. Daftari altogether changes the reading of Śalya 34. 6 by transposing the nakṣatras mentioned.

The difference between the day of Uttarāyana in Māgha stated in the Mahābhārata and the day thereof at present is utilised by scholars for arriving at the date of the Mahābhārata war.

There are other data in the Mahābhārata from which also the date of the Mahābhārata war is sought to be deduced. Before entering into details, some matters that are accepted by most scholars may be stated here. It is generally held that there were two eclipses, first, one of the moon immediately followed by a solar eclipse, that there was a fortnight of 13 days which was looked upon as very unusual and a very evil omen. Vide Bhīṣma 3. 28 quoted in n. 1767. In Bhīṣmaparva 3. 31-32 Vyāsa is reported as saying, 'I have known amāvāsyā occurring on the 14th, 15th or 16th day (of a pakṣa), but I do not know an amāvāsyā occurring on the 13th day (of a pakṣa); both the moon and the sun were eclipsed in the same month on the 13th day'. In the Maṇṣala-parva<sup>177a</sup> 2. 18-19, when Kṛṣṇa, 36 years after the war, beheld certain portents it is said, "on observing those portents on the amāvāsyā occurring on the 13th day he declared 'Rahu had made this (13th day) appear as the 14th and 15th (when usually there is amāvāsyā) when the Bhārata

177a. एवं पश्यन् द्वयीकितः संवत्सं कालतर्पयन् । अतोदृश्यामन्तावारान् दान्ते दृष्ट्वा  
जम्बीरदिदम् । अतर्दशी पञ्चदशी कृत्येयं राहुना हुनः । प्रागे वै माले पश्ये दाना आद्यं क्षयाय  
नः । मीमलपर्व 2. 18-19.



war took place; to-day it has again occurred for our destruction'. From these words it is clear that the occurrence of an *āvākyā* at the end of a *pakṣi* of 13 days was looked upon as a very evil omen. Then many scholars hold that a comet had also appeared at the time of the great war. Bhīṣma 3. 13<sup>178</sup> states, 'a very frightful comet stands in the sky covering the constellation of Pūṣya'. There are grave doubts whether the statement is made from actual observation. The appearance of a comet has always been associated in ancient times with great calamities. Compare Kumārasambhava II. 32 'upaplavāya lokānām dhūmaketurivot-thitāḥ'. As indicated above, the Mahābhārata gathers together several possible and impossible things to emphasize their significance as to impending calamities. Therefore the inclusion of a comet among portents does not establish that a comet had actually appeared at the time of the Bhārata war. Supposing for argument that a comet had appeared, that circumstance is of no help at all in settling the date. A large number of comets is included in the sun's retina. The number of comets of long periods that approach the sun in a century is said to be 300. There is nothing to show what particular comet appeared at the time of the war and no one has data to connect the Mahābhārata comet with Halley's comet or any other comet well-known in modern times. Therefore the *datum* about a comet is entirely worthless for purposes of chronology. According to Brhatsamhitā 11. 5 and Utpala thereon the ancient writer Parāśara held the view that there were 101 *ketus* and Garga said that there were a thousand. The description in Bhīṣma 3. 13 states that the *perihelion* of the comet was in Pūṣya. In Udyogaparva 143. 10 it is said 'since a *graha* specially afflicts Citrā, a great calamity is indeed approaching the Kauravas'. This may probably refer to a comet. Two other verses appear to have some bearing on this. Bhīṣma 3. 12 states<sup>179</sup> that the white *graha* stands traversing

1780. श्वेतो ब्रह्मस्तथा चित्रो समतिक्रम्य तिष्ठति । अभावं हि विश्लेषेण कुक्ष्यां तत्र पश्यति ॥ धूमकेतुर्महागौरः पूर्वं चाक्रम्य तिष्ठति । सैनयोश्चिह्नं घोरं करिष्यति महाग्रहः ॥ ... श्वेतो ब्रह्मः ब्रह्मलोकः सधूम इव पावकः । ऐन्द्रं तेजसि चक्रं उपेक्षामाक्रम्य तिष्ठति ॥ भीष्म ३. १२, १३, १४. The Maitras edition reads इत्यनेन ग्रहः in भीष्म ३. १४ and Dr. Dattari proposes to read 'चित्रो for चित्रात्' (p. 64 para 130).

1781. ध्रुवं ब्रह्मलोकं पश्यन्तस्तत्र प्रवर्तते । ऐन्द्रिणीं कीदृशरूपमुनौ च दृष्टिमाकर्तौ ॥ विद्याभ्यासकन्दरे चैव तिष्ठतिः पुरुषग्रहः । भीष्म ३. १७ ; compare ब्रह्मसंहिता II. ३२ 'श्वेत इति जडाकारो रूपः इत्यसौ विपश्चिभागवतः । विनिवर्ततेऽसत्यं विभागशेषा, यथाः कुक्षौ ॥', उपल explains: 'रूपः पुरुषः इत्यसौ कुक्ष्यार्णः'. It is remarkable that ब्रह्मसंहिता II. ३७ is 'विद्यासु कुक्ष्येवाधिपत्यं मत्स्यं समादिशेन्नयः', thus agreeing very closely with भीष्म ३. १२.

*citrā* (i. e. it is about to enter into *śrīti*) and verse 16 says, 'the white *graha* is fiery like fire emitting smoke and stands occupying Jyesthā which is a bright star presided over by Indra'. What is meant by 'white *graha*'? The words '*sveto grahaḥ*' should ordinarily denote Venus. Nilakantha takes them to mean Ketu (node) in Bhīṣma 3. 12 and another comet in 3. 16. If this latter explanation be accepted there were two comets seen at the time. Even if we hold that Bhīṣma 3. 16 describes the tail of the comet mentioned in 3. 13, that is of very little help. All that would be meant would be that the tail of the comet was a very long one. Bhīṣma 3. 17 has been taken to refer to Rāhu by Nilakantha, while some modern scholars hold that it refers to a comet. It means, 'a cruel comet standing between Citrā and Svāti, afflicts Rohiṇī and also the sun and the moon'. The description of the Ketu called Śveta in Brhat-saṁhitā 11. 39 agrees very closely with the description in the Bhīṣmaparva and Parāśara quoted by Utpala thereon states that the Ketu called 'Śveta' becomes visible after 115 years and portends the destruction of two-thirds of the population.

Then there are several passages which state the positions of several planets just before the battle or on the day the battle began. Here again at least two different positions are assigned to each planet except Mercury. It is first to be noted that at the beginning of the war all the seven planets excluding Rāhu and Ketu are declared to have been near each other (Bhīṣma 17. 2, q. in note 1776 above). We know from the Mahābhārata itself that the Sun and the Moon on Kārtika amāvāsya were in Jyesthā. If the war began on amāvāsya or a day later, the planets must be near Jyesthā. If the Bhāratasāvitrī be followed then the war began on Mārgaśīrṣa bright 13 and on Bharatī. If that were so, the sun and the moon cannot be together. Mr. Karandikar takes 11th of the bright half of Mārgaśīrṣa to be the tithi of the beginning of the war and holds that the Sun was in nakṣatra Jyesthā and that the moon was in Bharatī (following the Bhāratasāvitrī as to this last). I should hold that we are not at liberty to take one datum from one group of statements and another from another group and then say that it is proved that the war was fought at a particular time. It is further noted in Karna-parva 37. 4 that on Karṇa's death (i. e. 17 days after the war began), the seven planets were seen going away from the Sun.<sup>1782</sup> The positions of the planets at the beginning of the war were as follows:—

1782. निःसरन्त्यो ऽपहृणन्त्य सुर्यस्मिन् महाबलः ॥ अर्ज ३७. ४.



- SUN.**— Udyoga 143. 11 ( Rahu approaches the Sun )  
 Bhīṣma 3. 11 ( " " )  
 Bhīṣma 3. 28, 32 ( q. above in n. 1767 )  
 The Sun was either in Jyesthā or near Mṛgaśīrṣa.
- MOON.**— Bhīṣma 3. 17 ( *paraga graha* i. e. Rahu afflicted both the Sun and the Moon ) and Rohiṇi.  
 Bhīṣma 3. 28, 32 ( q. above in n. 1767 )  
 Bhīṣma 17. 2 ( the Moon was in the province of Maghā q. above in n. 1776 ).
- MERCURY.**— Karosparva 94. 49 says that on Karna's death the son of the Moon ( i. e. Mercury ), the white luminary, rose slantingly resembling in hue fire and the Sun. The Śalyaparva 11. 18 states that Mars, Venus and Mercury were in conjunction.<sup>1783</sup> If Mars was in Maghā as stated in Bhīṣma 3. 14 and Mars and Mercury were in conjunction Mercury would be in Maghā, which forebodes destruction of people by war, as stated in Bṛhatsaṃhitā 7. 3.
- MARS.**— Udyoga 143. 9 states, ' Mars having made a retrograde motion in Jyesthā seeks ( to reach or afflict ? ) Anurādhā, the nakṣatra presided over by Mītra, as if bringing death ( to friends )'. Bhīṣma 3. 14 states: ' Mars is retrograde in Maghā.' What is the meaning of this ? Literally it means that Mars was in Maghā and was retrograde in motion. Mr. Karandikar holds that Mars had only *dṛṣṭi* on Maghā and was in Pūṣya. Supposing this is correct, Mars was not near the Sun but far away.
- Bhīṣma 3. 18 declares: ' Mars, having changed its motion after being retrograde and with the lustre of fire, stands covering Śrāvapā, the mansion of Brh̥aspati'.<sup>1784</sup>

1783. उद्योग निर्णयः जलनार्कवर्जः सोमस्य दृष्टोऽद्विषाच निर्दिष्टः । तर्कपत्रं ३४.  
 49: चतुर्विधपरायुची क्षितिर्धमः समन्वितो । चरते वाणदुष्टवाणा दुरतास्तर्कचतुर्नाम् ॥  
 अरण्य 11. 18.

1784. कुला वाह्यारको यत् त्वेष्टायां मनुमुद्वेगः । अतुरायां मार्गपते मेघे संप्रत्यक्षितः ॥  
 उद्योग 143. 9: मयास्यद्वारको यत्कः अरण्ये च दृश्यति । यत् मयात्रयात्मकं दृष्टं भवेत्

We find that the Mahābhārata employs two classes of expressions. When it uses words like 'tiṣṭati' (stands), 'ākramya' (having traversed), 'samvṛtya or samparivārya' (having covered or concealed) it means that the planet was in or very near that nakṣatra. When words meaning 'afflicts (pālayati)' are employed, the meaning is probably that the planet has only dr̥ṣṭi on the nakṣatra. It is impossible to say whether the rules and theories about dr̥ṣṭi or pūrṇa dr̥ṣṭi and partial dr̥ṣṭi had been evolved at the time of the Mahābhārata War. If the war was fought about 3101 B. C. or even 1931 B. C. there is nothing to establish that the theories about dr̥ṣṭi contained even in the Atharvājyotiṣa (which is certainly later than the Vedāngajyotiṣa of the R̥gveda i. e. much later than about 1200 B. C.) were known then. Vide under Venus for further difficulties.

**JUPITER—** Bhīṣma 3. 14 states that Jupiter was retrograde in Śravana; Bhīṣma 3. 27 states,<sup>1785</sup> 'Both Jupiter and Saturn that had stayed together for a year are near Viśākhā and are both fiery'.

Jupiter cannot stay for one year in one nakṣatra; it traverses  $2\frac{1}{2}$  nakṣatras in a year. If at the time of the war Jupiter was near Viśākhā it could not have been near it for a year. Eleven months before that it would have been very near Citrā. If it was near Viśākhā at the time of the war and the Sun was in Jyēṣṭhā, it can hardly be correct to say that seven planets had come together in the sky (there being a distance of about two nakṣatras or about 26

(Continued from the last page)

पौष्पते ॥ भीष्म ३. १४ : बह्मराशिः समादृत्य मोक्षिताङ्गो न्यस्यिष्यति ॥ भीष्म ३. १८. उपपत्तुः on बृहत्संहिता १. १०. explains, अनुवर्कं स्पष्टमस्ति ॥ बर्को मतिं स्पष्टया पुनः स्पष्टी मतिमाश्रितो अनुवर्जित इत्युच्यते. In these verses there is probably some reference to the verses of Parāśara and Garga quoted by Utpalā on Bṛhatsamhitā 6. 1-13. Garga quoted on 6. 13 says that the nakṣatras from Pūrvaśādhā to Aśvinī are to be of *daśānu-mārga* and the movements of Mars in them cause danger.

1785. संपरिवारयामिनौ च ग्रहौ धम्वल्लिखामौ । विनाशापः समीपस्थौ बृहस्पतिः शनैश्चरौ ॥ भीष्म ३. २७ : बृहस्पतिः संपरिवार्य रोहिणीं चतुर्ष्वङ्गार्कसमो विज्ञापते ॥ वर्ण ३४, ५१.



degrees between the two). Even if we hold the meaning to be that Jupiter and Saturn had remained near Viśākhā for one year and are (now at the time of the war) fiery, that does not solve the difficulty. In the first place, it is not a natural construction. This meaning would leave the exact position of the two planets at the time of the war unspecified. But Jupiter and Saturn must be supposed to be in or near Jyesthā if the Sun was in Jyesthā at the beginning of the war. If Saturn was in Jyesthā at the time of the war it could have been one year in Viśākhā about two years before the war. What is the propriety of mentioning Saturn's position two years before the war? The relevant point is to state that position at the time of the war. Therefore it must be held that Bhīṣma 3. 27 states their position at the time of the war and adds one more circumstance that they were there for one year.

Kaṇva-parva 94. 51 says: 'Bṛhaspati having entirely covered Rohini has become like the Sun and the Moon'. If at the beginning of the war Bṛhaspati was retrograde and was near Viśākhā, it passes one's understanding how in a fortnight it came to Rohini. Mr. Karandikar suggests that Rohini here is the name of Jyesthā as in the Tai. S. IV. 4. 10. 1-3. Again in this explanation there are several difficulties. There is nothing to show that at the time of the Bhārata war or of the epic Jyesthā was called Rohini. The Tai. S. does not employ the name Jyesthā in its list. It speaks of Rohini once as having Prajapati for its presiding deity and then as having Indra as the presiding deity. Jyesthā is well-known to the Mahābhārata and the word is employed by it in other passages. Further, if Bṛhaspati had covered Jyesthā it can hardly be correct or even useful (for the purposes of chronology) to say that Jupiter was near Viśākhā.

## VENUS—

Bhīṣma 3. 15 states that Venus<sup>1785</sup> having ascended (i. e. occupied) the Pūrvābhādrapadā nakṣatra shines charmingly and it looks up to Uttarābhādrapadā together with (?). The meaning of 'parikramya sahitaḥ' is not at all clear. However the first half is as clear as possible. Venus was in Pūrvā Prosthapadā. If the Sun was in Jyesthā on Kārtika amāvāsyā, it is impossible that Venus could have been in the 8th nakṣatra from Jyesthā. Venus is never more than four nakṣatras from the Sun in the sky. This would completely knock on the head the principal statement that seven planets were near each other. Mr. Karandikar in desperation suggests that we should understand Pūrvāsādhā for 'Prosthapade Pūrve' and also that the word 'Prosthapade' was an interpolation inserted by some busy body later on. As I have frequently said above, this is a most unjustifiable way of dealing with the so-called astronomical data in the Mahābhārata. 'Prosthapade Pūrve' can never mean 'Pūrvāsādhā'. In the Tai. S. IV. 4. 10. 1-3, and the Tai. Br. I. 5. 1 and III. 1. 1 the word Prosthapadā is expressly employed for Pūrvā Bhādrapadā. Why should one word in a verse be held to be interpolated? Is it because it does not agree with one's hypothesis? In Śalya 11. 18 Venus and Mars are said to be in conjunction with the Moon. If the war started on Bharatī as the Bhāratasāvitrī says, then at the time of the mace-duel the moon might be in Jyesthā and therefore both Mars and Venus will have to be in Jyesthā. But this is opposed to two of the passages cited above referring to the position of Mars. If the war began on Jyesthā and Kārtika amāvāsyā, then on the 18th day the moon will be in Pūṣya or Āśleṣā and both Venus and Mars would have to be in one of these two. In any case, if Venus was in Pūrvābhādrapadā at the beginning of the

1785. शुक्रः षोडशदे पूर्वं समाचक्षत दिशो चक्षे । उपरि तु परिक्रम्य सहितः समुदीरितः ॥  
गीता 3. 15.



war, on the 18th day it can neither be in Jyesthā, nor in Pūṣya nor in Āśleṣā. Besides, it is debatable whether Bhīṣma 3. 16 (where 'śveto grahaḥ' is mentioned) refers to Venus or not. Venus is often called 'Sita' in ancient astronomical works (e. g. in Bṛhat-saṃhitā 9. 42, 45).

**SATURN—** We have four statements about Saturn. In Udyoga 143. 8 we read,<sup>1787</sup> 'A refulgent and malignant planet, Saturn, afflicts the nakṣatra presided over by Prajāpati (i. e. Rohini)'; Bhīṣma 2. 32 states, 'Saturn afflicts Rohini'; Bhīṣma 3. 14 says, 'the nakṣatra presided over by Bhaga is covered and afflicted by Saturn'; Jupiter and Saturn are near Viśākhā (Bhīṣma 3. 27 considered above). In the first three passages the root 'pid' occurs and therefore it is possible to argue that some kind of aspect (*dṛṣṭi* or *vedha*) of the nakṣatra mentioned in the text is meant. But in the third passage both 'ākramya' and 'pidyati' are used about the same nakṣatra. This makes that passage inexplicable in the usual way. The 'prajāpatya nakṣatra' must be Rohini as in the 2nd passage Rohini is expressly named. All authorities agree that Prajāpati is the deity of Rohini. 'Prajāpatya nakṣatra' cannot be taken to mean Mūla, since the presiding deity of Mūla is 'pitarah' in Tai. S. IV. 4. 10. 1-3 and Nirrti (in the Tai. Br. I. 5. 1 and in the Vedāṅga-jyotiṣa) and Prajāpati only in some later works. Bhaga is the presiding deity of Uttara Phalguni in the Tai. S. IV. 4. 10. 1-3 and Tai. Br. I. 5. 1, and III. 1. 1, while in the Vedāṅga-jyotiṣa (Rgveda, verse 25), Viṣṇu Dh. S. (78. 16), Śān. Gr. (I. 26. 9, SBE vol. 29 p. 53) Bhaga is the deity of Pūrva Phalguni. The 4th passage about Saturn being near Viśākhā has been already dealt with under Jupiter.

1787. राजापातं हि नक्षत्रं ग्रहसंज्ञितं महापुत्रिः । इमैश्वरः पीडयति पीडयन् कालि-  
नोऽपिकम् । उद्योग 143. 8; रोहिणीं पीडयत्येव रोहिणी राजस्य इमैश्वरः । भीष्म 2. 32;  
यस्य नक्षत्रमाकाशं सूर्यद्वयेन पीडयते । भीष्म 3. 14.

The above detailed statement about the astronomical passages of the Mahābhārata will induce any unbiassed reader who has no axe to grind that they are hopelessly inconsistent and that no certain chronological conclusion can be drawn therefrom. In the above discussion I have generally not cited the various explanations indulged in by several scholars, as that would have involved me in a very lengthy discourse without any adequate benefit. To me it appears probable that the final redactor of the Mahābhārata had two or more sets of astronomical data about the war before him and without trying to examine and sift them he included them all in his work. The Bhārata-sāvitrī probably represents one (and a later) tradition about the positions of the planets at the time of the war. As I hold that either the Mahābhārata passages on the positions of the planets were interpolated at a very late stage or are hopelessly inconsistent I deem it unnecessary to enter upon an examination of the mathematical calculations made by several scholars to find out the date of the Bhārata war from the shifting of the solstices and the position of the planets.

Since only 5046 years have elapsed (in 1945 A. D.) from the beginning of the Kali age and as Kaliyuga extends to 432000 years according to Paurāṇic computations we are just on the threshold of the Kaliyuga and it is beyond one's comprehension to visualize what will happen towards the end of the vast period of about 427000 years that are still to pass before Kaliyuga ends. It is very small consolation to read in the Purāṇas in a prophetic strain that at the end of that colossal period Viṣṇu will be incarnated as Kalki in a village Śambhala, will destroy all Mlecchas, śūdra kings and heretics and will establish dharma, so that the Kṛta age will then be ushered in. Here again as in almost all matters there are differences in the legend. The Vāyu (58. 75-90) and the Matsya (144. 50-64) state that it will be Pramati Bhārgava who will be the *avatāra* of Viṣṇu and uproot the Mlecchas, heretics and śūdra kings, while Vāyu 98. 104-110 and 99. 396-7, Vanaparva 190. 93-97, Bhāgavata XII. 2. 16-23 state that Kalki will conquer the Mlecchas, will become a universal emperor (*cakramartin*) of the *dharma-vijayin* type and will start the Kṛta age. In some passages he is called Kalki (nom. of Kalkin) as in Vanaparva 190. 93, Brahma 213. 164, Vāyu 99. 396, Matsya 47. 248, Nṛsīmha 54. 3; while in others as Kalkī (nom. of Kalki) as in Vāyu 98. 104, Kalki 2. 28, Bhāgavata XII. 2. 16, Matsya 47. 251. In



some passages he is said to be the son of a brāhmana Viṣṇu-yaśas who will be the head<sup>1784</sup> of the village called Śambhala (Bhāgavata XII. 2. 16, Viṣṇupurāṇa IV. 34. 26, Agni 16. 8, Nṛsiṃha 54. 3, Kalkipurāṇa 2. 34), while in other passages he is himself styled Viṣṇu-yaśas (Vāyu 98, 104, Vanāparva 190, 93, Brahma 213, 164, Viṣṇudharmottara I. 74, 40).<sup>1785</sup> In some places

1784. सम्भलदेशसुखवरस नाह्वयस्य ग्नात्मनः । भवति विष्णुपुत्रतः कल्किः पादुके-  
ल्लिपति ॥ अथमाहुषमासस्य त्वेवमेतं जयत्यसिः । अस्मिन् नाहुषमनमर्हेश्वरं दुष्पानिकाः । .....  
पदावर्णयोः भगवत्कल्किर्यमपिहिरिः । कृतं भविष्यति तदा प्रजावृत्तेषु सार्विकी ॥  
नामस्त XII. 2. 16-23.

1785a. Various efforts have been made about finding germs of history in the legend of Kalki. In I. A. vol. 48 pp. 123-128 Prof. H. B. Hyde tries to show how Jain authorities about Kalki are conflicting. Mr. K. P. Jaysawal in I. A. vol. 46 (for 1917) p. 143 holds that Kalki must be identified with the great hero Yaśोधरman who ruled over India from the Brāhmapurā to the Western Ocean and from the Himalaya to Mahendra and who conquered the Hun Mihirakula and made him pay homage to his feet as stated in the Mandasor Inscription (vide Gupta Ins. p. 149). Prof. Pathak on the other hand relying upon certain Jain sources identifies Kalki with Mihirakula himself (I. A. for 1918 at p. 19). Otto Schrader in Brahmayidyā vol. I. pp. 17-27 discusses how the names Kalki or Kalki came to be given to the saviour of India from Miocobas, heretics and the like. Kalki means 'sin' or 'sediment' and Karka means 'a white horse'. Therefore he thinks that Kalki is a form of *karka* (one riding a white horse). Vide also N. I. A. vol. IV, pp. 337-343 (on Kalki from the Kalkipurāṇa). It is probable that the dismal accounts of Kaliyuga were put forth in the first centuries of the Christian era when the ancient varṇa-dharma had suffered a great set-back owing to the ascendancy of Buddhism and Jainism and the invasions of foreigners like the Sakas and Hūnas, that when Yaśोधरman defeated the great Hun invader Mihirakula, people believed that the dark ages were at an end and that an era of perfect dharma was at hand. That Mihirakula was a most ruthless and blood-thirsty invader who in his long career of 70 years slaughtered myriads of men and women is stated by the Rājatarāṅgiṇī I. 310 (which speaks of him as *trikaṣṭhan*) and 322 (which narrates that he slaughtered three crores of women of respectable birth together with their husbands, brothers and sons). Hiouen Tsiang (Beal's B. R. W. W. pp. 171-172) narrates that Mihirakula either slaughtered or made slaves of nine lakhs of people in Gandhāra. Passages in a prophetic vein were added about the time of Yaśोधरman to those already existing about the decline of dharma in Kaliyuga. This will of course necessitate that all passages about Kalki in any work whatever were put in later than about 550 A. D. There are two theories as to who defeated Mihirakula. Hiouen Tsiang's account gives the name of the victor as Bāhilitya of Magadha (vide Beal's B. R. W. W. part I. pp. 167-171). On the other hand there are three inscriptions, the

(Continued on the next page)

he is said to have already flourished (Vāyu 98. 111, Matsya 47. 255), in other places the texts employ the future (Vāyu 99. 396, Bhāgavata XII. 2. 16). This last discrepancy is probably due to the fact that the writers sometimes forget their role of prophets. Further, it has to be remembered that according to the Purāṇas the four yugas (and therefore the Kalki avatāra) have been repeated again and again. The Kalki-purāṇa (I. 2. 33 and I. 3. 32-33) states that Kalki was a contemporary of Viśakhayūpa king of Mahīrmati, while the Vāyu (99. 312-314), Matsya (272. 4) and Viṣṇu (IV. 24) state that Viśakhayūpa was the 3rd of the Pradyota dynasty that preceded the Śiśunāga dynasty. Though the Kalki-purāṇa several times uses the past tense about Kalki, yet at the very beginning it says (I. 10) that what is narrated is an akhyāna (story) of the future. It is interesting to note that in the Parnālaparvata-grahana-akhyāna<sup>1788b</sup> of Jayarāma composed about 1673 A.D. Bahlolkhan,

(Continued from the last page)

Gwalior stone Inscription of Mihirakula (Gupta Ins. No. 37 p. 161), the Mandasor stone Pillar Inscription of Yasodharman (Gupta Ins. No. 33 p. 142), and the Mandasor Stone Inscription of Yasodharman Visnucardhana (Gupta Ins. No. 33 p. 150) in none of which is Bālāditya referred to. But in the Sarnath Stone of Prakāśaditya, son of Bālāditya, another Bālāditya is referred to (Gupta Ins. No. 79 p. 284). In the Mandasor Stone Pillar Inscription (Gupta Ins. p. 147) occur these words relating to Mihirakula 'भीमसेनाय विषय मण्डलिभुजप्रदायर्जुनाद्विजयमूर्त्तौ प्रतापपूर्णोपहारि-मिहिरकुलसुपेणाचितं वाङ्मयम्'. In the Mandasor Stone Ins. (Gupta Ins. No. 35 at p. 153) lines 4 and 5 read अथ अग्रते चरेण् श्रीपशोर्धर्मनामा । अग्नौ जिज्ञी विजयते अग्नौ हुनन् श्रीविजयवर्धनराष्ट्रपतिः स एव & Dr. Fleet held that Yasodharman and Visnucardhana were different, but the reasons he assigns are unconvincing and Jayaswal appears to be right in holding that Visnucardhana is the same as Yasodharman (in 'Imperial History' pp. 39-41) and that Visnucardhana was the overlord of Bālāditya. It appears likely that the compilers of the extant Purāṇas combined the two principal parts of the two names Visnucardhana and Yasodharman and that the conqueror of the Mlecchas was said to be Visnuyāna. Vide I. H. Q. vol. XII p. 331 and vol. XV pp. 302-304 for Yasodharman, Visnucardhana and Mihirakula and Dr. R. C. Baner in 'History of North-East India' (1934) pp. 97-101 (who holds that Yasodharman and Visnucardhana were two different Kings). Fargier's 'Ancient Indian tradition' and 'Dynasties of the Kali age' and Dr. Pradhan's 'Chronology of Ancient India' may be read with advantage in connection with the historic material in the Purāṇas.

1788b. अग्रते जित सिन्धुना आद्ये कश्चिद्विश्वतम् । काली विष्णुनारायणौ दत्तमः सम्य-  
विपत्तिः । उत्तरवर्ते तेन सर्वत्र शान्तिं प्राप्तवन्मन्दम् । उत्तरवर्ते कलिकलराजवद्वारादे समागतः ।  
दुते नै प्रतिभारपस्मापत्तौ प्रेमनिधिनोदयः । पण्डितपण्डितमहाशयान V. 6-8. published  
by भारत-इतिहास-संशोधन-मण्डल at Poona, 1923.



commander-in-chief of the Bijapur army, is made to say to Khawaskhan, the Vazir, as follows, 'In the Hindu śāstras some say that Kalkin, the 10th avatāra of Viṣṇu will be born and he will destroy the hordes of Yavanas. Shīvajī appears to be the first harbinger of that Kalkin'.

Even though the Purāṇas are carried away by their over-zeal in condemning the moral and physical decline of the Kali age, almost all of them exhibit no verses about matters forbidden in the Kali age. We have to see when the topic of *Kalivarjya* attained prominence and what the matters are that were once practised by people without objection and that later on came to be prohibited or condemned.

The Āp. Dh. S. (II. 6. 14. 6-10) condemns the practice of giving all or most of the ancestral property to the eldest son as opposed to śāstras. The Āp. Dh. S. (II. 10. 27. 2-6), after referring to the view of some that a woman when being married is given to the whole family of the bridegroom, condemns the practice of *niyoga*.<sup>1789</sup> Both these practices (of *udbhāraṁbhūga* and of *niyoga*) are among those included in the texts on *Kalivarjya*. Among the earliest references in the smṛtis to practices once current, but forbidden in the Kali age is a passage of Brhaspati quoted by Aparārka p. 97, where *niyoga* and the numerous secondary sons are said to be impossible owing to the decadence<sup>1790</sup> of spiritual power among men of the Dvāpara and Kali ages. Aparārka p. 739 and the D. M. quote a passage of Śaunaka to the effect that sons other than the aurasa or dattaka are not allowed in the Kali age<sup>1791</sup>. Prajāpati (verse 151) refers<sup>1792</sup> to the ancient practice of offering meat and wine in śrāddhas, but prescribes that these should be eschewed in the Kali age. Vyāsa<sup>1793</sup> quoted in the *Nirnayasindhu* and other works forbids

1789. सगोत्रस्यानीयां न परितः समाचरति । कुलाय हि श्री पश्यत इत्युपदिशति । तद्विद्वत्पुत्रैर्गृह्यतिष्ठति । अगोत्रं हि परतः पापेः । तद्व्यतिक्रमे षड् पुनश्चयोनैकः । आप. ध. सू. II. 10. 27. 3-6.

1790. Vide H. of Dh. vol. II. p. 603 n. 1418 for the quotation.

1791. अथ एव कर्तुं निवर्तते इत्युच्यते श्रीमद्वैवेकि-वचोरेतेरेषां तु पुत्रेन परिग्रहः इति । अपारं p. 739. This is cited as from आदिपुरुषात्म in several other works.

1792. मद्यमदसृष्टं माद्ये कर्तुं तच्च विवर्तयेत् । भोक्तार्याणि हि सर्वाणि पुनर्धर्मकमाद्य मये । मयापति 151.

1793. चत्वार्षद्वसहस्राणि चत्वार्षद्वसहस्राणि च । कलेर्गवा गमिर्यसि तदा वेता-परिग्रहः । संन्यासस्तु न कलेर्गवा माह्वयेन विज्ञानता ॥ q. by भट्टोक्ति in टीका on चतुर्वर्णसंस्मृत्य p. 55. Vide H. of Dh. vol. II. p. 953 n. 3481 for other references to this text.

the setting of the three vedic fires and of resorting to saunhyāsa after 4400 years of Kali. The *Laghu-Āśvalāyana*<sup>1794</sup> smṛti (21. 14-15) states that the two kinds of soma called Kunda and Golaka were permitted in former ages and had the samakāras performed on them, but are condemned in the Kali age. Viśvarūpa and Medhātithi, it is worth noting, do not quote a single verse about Kali-varjya. On Yāj. III. 30 Viśvarūpa tries to reconcile Parāśara III 5 (saying that a brāhmaṇa who is learned in the Veda and keeps the sacred Vedic fires becomes free from impurity in a day) with Parāśara III 8 (that for ten days on impurity due to birth or death the food of that family becomes unpartakable for others). He does not accept the idea that the period of impurity is only one day for a learned man, but explains that Parāśara III 5 is only an *arthavāda* meant for glorifying the study of Veda and the keeping of sacred fires. Among later commentators it is stated that the narrowing down of the periods of impurity on the ground of Veda study is forbidden in the Kali age. As this explanation is not offered by Viśvarūpa it is not unreasonable to infer that Viśvarūpa was not aware of the passage on this point quoted from the *Ādityapurāṇa*. Medhātithi<sup>1795</sup> also (on Manu IX. 112) refers to the opinion of some that the smṛti passages about niyoga and uddhāra-vibhāga were applicable only in bygone ages, since smṛtis are restricted to certain ages (vide Manu I 85); but he refutes that view and explains Manu I 85 by saying that the meaning is that the dharmas (i.e. qualities or natures of things) change from age to age as they do from season to season. From this it is clear that he did not accept that certain practices current in one age were forbidden in others. Viṇṇāśvara<sup>1796</sup> quotes a single verse which condemns the practice of niyoga, the giving of a special share to the eldest son and the killing of a cow in a sacrifice as not allowable in the Kali age. That

1794. संस्कारो विधिष्योक्तो मुनिभिः कुण्डगोलकौ । युगान्तरं न धर्मः स्यात् कलौ निन्द्य इति स्मृतः ॥ परिशिष्टां मुनः कुण्डो यमिच्छारसमुद्धवः । गोलको विधवाय च निविद्यः स्वाकलौ स्मृतः ॥ लग्नाच्छलायन 21. 14-15.

1795. Vide n. 1197 above for मेधातिथि's remarks दृष्टमुद्धारनिषेधः ... तदे-तद्विषयम् । Then मेधा. continues : न द्वेषविधः कालविषयः कश्चिदपि क्षुपते साधमान-धर्माद्विनिवृत्तमवश्यम् । वरुचान्ये कुतश्च धर्मो इति तत्रापि एव स्वाश्रयत्वम् । मेधा. on मनु IX. 112. On मनु I. 85 जन्वे कुलद्वये धर्मोः इति वाच्यः धर्मशब्दो न पाप्मादिवचन एव किं नहि पदार्थरूपमात्रे वर्तते । ... यथा वसन्तः श्रमः पदार्थावो स्वभावोऽन्यो व्रीह्येण एव यथा-स्त्वं कुमेत्यपि.

1796. Vide above p. 628 n. 1195 for the verse यथा निषेधधर्मो नो.



verse is said by the Sm. C. H. p. 265 to have occurred in the Saṅgraha (i. e. the work called Smṛtisāṅgraha). The Sm. C. quotes a verse of Kratu which forbids four acts in Kali, viz. niyoga, remarriage of a married girl, killing a cow in sacrifices and the taking of a jar.<sup>1797</sup> The Nāradya-mahapurāṇa contains four verses about Kaliyariya stating that certain practices which were once allowed are forbidden in the Kali age, viz. sea voyage, the carrying of a jar of water, marrying a girl of a class lower than one's own, *niyoga*, killing of an animal in Madhuparka, offering of flesh in śrāddhas, the stage of a forest hermit, remarriage of a married girl when the marriage was not consummated, perpetual student-hood, human sacrifice, horse sacrifice, starting on the great journey, the sacrifice of a cow<sup>1798</sup>. Aparārka (pp. 15, 68) quotes one verse and a half from the Brahmapurāṇa about certain Kaliyariyas viz. perpetual student-hood, the carrying of a *kamandala*, marriage with a śaṅotra or sapīṇḍa girl, the killing of a cow, human sacrifice, horse sacrifice, drinking intoxicating liquors.<sup>1799</sup> This could not be traced to the Brahmapurāṇa, but the Prāyaścitta-tattva (p. 520) ex-

1797. कलुरात्रे । देवराज सुतोत्पत्तिः इत्या कस्या न दीयते । न पक्षे गोवधः कार्यः कालौ च न कमण्डलुः ॥ q. in स्मृतिच. I. p. 12, भट्टोजि's टीका on चतुर्विंशतिमत p. 49 कलिवर्णने, folio 1, समवकाश p. 261.

1798. समुद्रप्रादुर्भावः कण्वस्तुविधारणम् । द्विजानामसङ्गर्हास्तु कन्यादुपगम-  
स्तथा ॥ देवराज सुतोत्पत्तिर्गुरुर्गर्ह्यः । मोसादने तथा भादे पानदस्ताभ्यस्तथा ॥  
इत्यादिवाक्याः कस्यापि पुनर्दानं परस्य च । नेष्टिर्न ब्रह्मचर्यं च नरनेष्टाभ्यस्तथा ॥ महागणपत-  
नमने गोमेधश्च तथा मयाः । एतान् प्रमाद कलियुगे नष्टोभाहूर्मलीदिवः ॥ नारदीयपुराण,  
द्विर्धे, 24, 13-16. These are quoted as from the बुधश्चादीयपुराण in the उद्धारणम्  
p. 112, the निर्णयसिन्धु p. 367 (reads समुद्रप्रादुः सङ्गर्हाः), कलिवर्णने, folio 2  
(reads मोसादने and समुद्रप्रादुर्भावः); the स्मृत्पर्यसर p. 2 contains the half  
verses समुद्रप्रादुः ... धारणम्, इत्या ... परस्य च, and कन्यादुपगमने गोपशुभ इत्यादिः  
(but without name). The मद्. ग. p. 10 has the first half (without name)  
and also the half दीर्घकाले ब्रह्मचर्यं धारणं च कमण्डलुः.

1799. दीर्घकाले ब्रह्मचर्यं धारणं च कमण्डलुः । सगोत्राद्वा सपिण्डाद्वा विवाहो गोप-  
धस्तथा । नराभ्यर्चयेत् मधु च कालौ वर्यं द्विजानिभिः ॥ इत्यादिना महादिर्गमपुराणादीं  
समाख्यातो ऋषिर्नारायणविज्जवाह । अत्रार्धे p. 15, स्मृतिच. I. p. 12, परा. मा. I. part 1  
p. 133. The स्मृतिच. देवादि III. 2 (p. 666), मदनहस्त and निर्णयसिन्धु (p. 367)  
read गोवर्णनाहुः सपिण्डाच्च विवाहः which means 'marriage with a daughter of the  
paternal aunt or with a girl who is a sapīṇḍa of one's mother's, maternal  
uncle's daughter.' The स्मृतिच. attributes these verses to आदिशुक्लपुराण while  
निर्णयसिन्धु p. 286 ascribes them to आदिशुक्लपुराण. The कलिवर्णनेनिर्णय reads गोवर्-  
णमाहुस्तुविधारणम्, notices also the reading गोवर्णनाहुः सपिण्डान् and has a long note  
on this, citing and refuting various views. According to the मोसकनविषेक  
of विश्वनाथ p. 27 even the ब्रह्मसूत्र quoted this ब्रह्मपुराण passage: (reading  
गोवर्णनाहुस्तुविधारणम्).

pressly states that these were cited from the Brahmapurāṇa in the works of Halāyudha, Śaṅkara and in the Grhastharatnākara (i.e. from about the 12th century onwards). Aparārka (p. 98) quotes another passage from the Brahmapurāṇa<sup>180</sup>, which condemns remarriage of women, niyoga, independence of women, on the ground that men in the Kali age are sinners. Aparārka (p. 233) quotes two verses from a smṛti (without name) the first of which prohibits six acts, viz. killing a cow in sacrifice, niyoga (of husband's brother), the performance of *sautras*, taking a water jar, use of wine (in *sautrāmaṇi*), being an ascetic (of the *paramahansa* type) and the second prohibits five, viz. human sacrifice, cow sacrifice, the taking of a kamandalu, niyoga, and the remarriage of a girl whose marriage has not been consummated. Aparārka (p. 233) quotes a passage from the Mārkaṇḍeya recommending the offering of a golden vessel in place of the cow in Madhuparka and stating that Bhṛgu laid down that no animal was to be sacrificed in Kali. The Sm. C. (I. p. 12) quotes a Purāṇa passage that 'the remarriage of a married woman, special share to the eldest son, the killing of a cow, niyoga and the taking of a kamandalu—these five are to be avoided in Kali'<sup>181</sup>. Hemādri and the Sahyādri-khaṇḍa state, 'Agnihotra, the killing of a cow, *śanyāsa*, offering of meat in śrāddha and raising of a son by the husband's brother—these five were<sup>182</sup> to be avoided in Kali. Hemādri in Dānakhaṇḍa quotes a passage from the Garuḍapurāṇa in which seven matters are mentioned as forbidden in Kali, viz. Āśvamedha, Gosava, human sacrifice, Rājāsūya, remarriage even of a girl whose first marriage was not consummated, the carrying of a kamandalu and procreation of a son off a widow by her husband's brother. The Smṛtyarthasāra (p. 2) mentions twenty-six Kali-varjyas without expressly citing the name of any work. In the Sm. C., the Caturvargacintāmaṇi of Hemādri (III. part 2 p. 666), the Par. M. I. part 1 pp. 131-137, the Madanapārijāta (pp. 15-16),

1800. स्त्रीणां पुनर्विवाहस्य देवराजद्वयमनतिः । स्वात्मनश्च कलिपुरे कर्तव्यं न कदाचन । यतः पान्क्तिरो लोकं नरा मलि कलो युगे । ब्रह्मपुराण प. 4 by अपरार्क p. 98.

1801. दुरागेति । उवाचाः पुनश्चाह उवाचो गोपश्च तथा । कलो पञ्च न कुर्वति ज्ञानुकार्यं कमण्डलुश्च । स्मृतिच. I. p. 12. This is quoted from the आदिपुराण in the मदनमाला. Vide n. 1700 above and कलिपर्वणि, स्मृतिच. (पञ्चाङ्गम्) p. 13 quotes it as from पराशर.

1802. अग्निहोत्रं गवाहन्ते संयासं पतयेद्वयम् । देवराजश्च सुहोःपति कलो पञ्च विवर्तयेत् । स्मृतिच. (पञ्चाङ्गम् p. 176), वलिपर्वण्यम् p. 2, सहायिणश्च (उत्तरभाग chap. V. 64-65). The first two read अम्पादेवम्. The निर्णयसिन्धु p. 370 quotes the verse as a śloka.



Madanaratna (samayoddyota), the Udvāha-lattva ( p. 112 ), the Samaya-mayūkha, the Samayaprakāśa of Mitrāmītra ( pp. 261-263 ), the Nirṇayasindhu ( III, pūrvārdha at end ), Bhaṭṭoji on Caturvīṃśatī-mata, the Smṛtimuktāphala ( varṇāśrama p. 13 ), the Smṛtikaustubha, the Dharma-sindhu ( pp. 357-358 ) and some other works quote long passages from a purāṇa ( which in some of them is specified as the Adityapurāṇa ) that mentions about 50 Kalivarjyas<sup>1803</sup>. There is a work called Kalivarjyavinirṇaya or Kalivarjyanirṇaya composed by Dāmodara elder brother of Nīlakaṇṭha ( first half of 17th century A. D. ), who in his Samaya-mayūkha refers to it. It quotes the Adityapurāṇa, Brahmapurāṇa and other texts that are quoted here from Hemādri and other older digests<sup>1804</sup>.

In the passage quoted the several Kalivarjyas are not arranged on any systematic basis. Here, first of all a few Kalivarjyas that have a bearing on law will be mentioned and then the rest will be taken up one after another in the order in which they appear in the extract and lastly those that do not appear in that extract will also be dealt with. The first verse states that certain actions were discarded by the wise though this was unauthorized ( by śruti or smṛti ) after arriving at a convention among themselves through fear of the loss of dharma ( if they were persisted in ), because in the Kali age there is absence of good men. The last verse and a half again state that at the beginning of the Kali great men arrived at certain conventions and discarded certain actions in order to guard the people ( against harm and sin ) and ( it is well known ) that the conventions of good men are authoritative like Veda<sup>1805</sup>.

1. Giving a larger share of ancestral property or the whole of it to the eldest son ( this is called *jyeṣṭhāṅka* or *udilhāra* or *udilhāraśikhāṅga* ). Vide pp. 624-631 above for this.<sup>1806</sup>

1803. Vide Appendix for the passage.

1804. A ms. of this work existing in the Central Library at Baroda was very kindly lent to me through the Bhandarkar Oriental Institute at Poona. There are eleven folios with ten lines on each side and about 46 letters in each line.

1805. Compare Āp. Dh. S. I. 1. 1. 2-3 ' अङ्गिरसः, शान्तिः, श्रेयः ' and Vas. I. 4-2.

1806. The earliest reference in English to Kalivarjya matters is found in a translation of the passage of the Samayoddyota section of the Madanaratna contained in Sir William Jones' Works vol. VIII ( ed. of 1807 ), General Note; vide also Strange's Hindu Law, vol. II pp. 156-174 for reference in a modern work on Hindu Law to several topics of Kalivarjya.

2. Appointing the husband's brother (or a sagotra &c.) to raise issue on the wife of a sonless man. This is called *nīyoga* and has been dealt with at length in H. of Dh. vol. II. pp. 399-607. It may be added here that in the K. V. N. there is a long discussion on the question whether an elder brother of the deceased could have been appointed to raise issue on his younger brother's widow and gives it as the opinion of some that he could not be so appointed, but that only a younger brother could be appointed to raise issue on his elder brother's widow. They rely on the Mīt. on Yāj. I. 68 where 'devara' is paraphrased as 'kānyān bhrātā'. The K. V. N. (folio 5 b and 6 a) relying on Manu IX. 62 and the words of the Mīt. on Yāj. II. 127 (where Manu IX. 69-70 are cited and explained as 'devaras-tasya jyesthaḥ kaṇiṣṭho vā') holds that any brother whether elder or younger than the husband could be appointed.

3. The admission of several kinds of secondary sons other than the aurasa and the dattaka. For this vide above pp. 647-653.

4. Remarriage of widows. This subject has been dealt with in H. of Dh. vol. II. pp. 608 ff. Some texts such as Vaa. 17. 74 make a distinction between the remarriage of a woman whose marriage was not consummated and of a woman whose marriage was consummated, remarriage being allowed in the first case but not in the 2nd. The Kālvārjya texts forbid remarriage in both cases.<sup>1807</sup>

5. Intercaste marriages. This subject has been treated of in H. of Dh. vol. II. pp. 447-451. It has been shown by me above (pp. 599-600) that the decisions in 46 Bom. 871 and 55 Bom. 1 are based upon a misunderstanding about the real views of Nīlakantha.

6. Marriage with sagotra girls or with girls that are sapindas of the mother (such as the maternal uncle's daughter). Vide H. of Dh. vol. II. pp. 452-478 for prohibition on the ground

1807. गणितेन चतुर्षु बाह्ये केवलं मन्त्रसंस्कृतः। सा चेद्वधवधोनिः स्थावराः संस्कार-  
मर्हति ॥ ब्रह्म 17. 74. The half verse बालिकावधवधोन्मिः स्थावराः संस्कृतिः  
refers to both kinds of widows viz. बालिका (whose marriage is not consum-  
mated) and वधवधोनिः (whose marriage is consummated). The reading of  
हेनादि and कलिरर्हति. (folio 1) 'बालिकावधवधोन्मिः (or—वधवधोनिः) is to be  
understood as referring only to the first kind (बालिका वासो अवधवधोनिः).  
The निर्णयसिन्धु (p. 368) reads बालिकाः वधवधोन्मिः.



of sapinda relationship, pp. 497 ff. for prohibition on the ground of gotra and pp. 458-463 for marriage with maternal uncle's daughter. The custom of marrying the maternal uncle's daughter has persisted to this day in many castes in spite of the inclusion of it among Kalivarjyas. An inscription at Nagarjunikonda (3rd century A. D.) shows that Virapurusa-datta, son of Śāntamūla, married three daughters of his paternal aunts (E. I. vol. XX, p. 1).

7. Slaying a brāhmaṇa who comes as an ātatāyin in a properly conducted fight. Vide H. of Dh. vol. II pp. 148-151 and p. 517 above for this subject.

8. Awarding of fines against witnesses who depose in disputes between father and son.<sup>1308</sup> It has already been seen (p. 299) how ordinarily suits between husband and wife, father and son were not encouraged in ancient India. But when such a dispute came to the king's notice he could take action *suo motu*, as Nār. includes 'pitāputra-vivāda' among the miscellaneous matters (prakīrṇaka verse 3) which the king was to set in motion. Even in ancient times this rule must not have been strictly enforced. As time went on and separation of father and son became frequent the rule must have appeared to be unreasonable. Vide Mit. on Yāj. II. 32 referred to above in n. 418. Yāj. II. 239 (= Matsya 227, 198) prescribed a fine of 3 paṇas for those who (instead of composing the quarrel between father and son and being able to do so) undertake to be witnesses. Viśvarūpa read 'a fine of two hundred paṇas'. Viṣṇu Dh. S. V. 120 prescribes a fine of ten paṇas. This shows that at the time of the Matsyapurāṇa this act was probably not included among Kalivarjyas.

9. Taking (or stealing) of corn even from one whose actions are lowly (i. e. even from a śūdra), when a brāhmaṇa has been without food for six times (i. e. three days). Gaut. 18. 28-29, Manu XI. 16 and Yāj. III. 43 provide that when a brāhmaṇa cannot earn his maintenance in a season of distress even in any one of the ways indicated in Yāj. III. 42 and has been hungry for three days he may steal or take away one day's food even from a low person such as a śūdra. It should be noted that this Kalivarjya text pointedly repeats the very

1308. विवादुक्तोर्विरोधे साक्षी न विहितः। अस्ति हेतवः दण्ड्यत्वेन कार्यापणान्प्रमाणेन विदितोऽप्यवश्यं दण्ड्यः। सङ्कलितसौ q. by अवतारं p. 324.

words of Manu XI. 16 'bhaktāni sad-anaśnatā ... hartavyam hinakarmapaḥ'). In ancient times theft of such a minor nature was permitted when the brāhmaṇa was furnished. But later times took a stricter view of the matter.

10. 'The admission to intercourse of a brāhmaṇa who undertakes a sea voyage, even though he may have performed the penance prescribed for the same' (I. 7 in the appendix). Here the word used is 'dviṣya'. It may mean either any person of the three higher castes or a brāhmaṇa. If a man who has made a sea voyage took prāyaścitta he expiated only the sin, but did not become fit, according to this dictum, to be associated with by others. Whether the Vedic Aryans knew the sea has been doubted. Vide 'Vedic Index' on 'samudra', vol. II, pp. 431-433. The Nirukta II. 10 refers to the fact that a doubt arises whether the word 'samudra' in a particular vedic verse refers to the sea or to the sky. In some verses as in Rg. X. 98. 5 'he discharged divine ruin waters from the higher to the lower samudra' both the meanings of 'samudra' (via. sea, sky) are pointedly brought out. Vide also Rg. VII. 6. 7 (a samudrād-avarād-ā paramāt). In Rg. VII. 95. 2 Sarasvatī is mentioned as going from the mountains to the sea. In Rg. X. 136. 5 the two seas, Eastern and Western, are mentioned (ubhau samudrāvā kṣeti yaśca pūrva utāparaḥ). In Rg. VIII. 6. 4 it is said, 'all people bend down to him, as the sīndhus (rivers) flow to the Ocean.' Rg. I. 116. 4-5, X. 39. 4 and X. 143. 5 refer to the story that Aśvins saved Bhujyu from the waters of the sea.<sup>189</sup> The Atharvaveda XI. 2. 25 refers to eastern sea and northern sea. There is no doubt that in the Brāhmaṇas the sea was well-known. The Tai. Br. II. 2. 5. 6 remarks, 'there is no end to desire and also to samudra' (neva hi kāmasyāntostī na samudrasya). The Ait. Br. (40. 2) remarks 'just as the sea stands surrounding the earth' (tābhi rājānam parigrhya tiṣṭhāti samudra iva bhūmin). It has already been seen that among the five practices peculiar to the north the Baud. Dh. S. (I. 1. 22) enumerates sea voyage (samudra-samīyāna) as the last and condemns it. Baud. (II. 1. 51) places sea voyage at the head of grave sins (pāṇḍityāni) along with misappropriating a brāhmaṇa's wealth kept as a deposit. The Mit.

1899. Vide 'Vedic Hymns' by Max Müller (S. R. E. vol. 32 pp. 57-62) for a note on the question whether the Indians of 'the Vedic age' knew the surging sea (terrestrial).



on Yāj. III. 288 quotes the sūtra of Baud. Manu ( III. 158 and 166-167 ) provides that a brāhmaṇa who had been on a sea voyage was sinful and was not to be invited at a śrāddha. But it is clear that Manu does not say that such a brāhmaṇa altogether loses caste or that he becomes altogether unfit to be associated with; all that Manu provides is that such a brāhmaṇa became unfit for invitation at a śrāddha. The Auśanasasmṛti ( IV. pp. 525-526 ) declares that those who sell the Veda, who marry a widow, who undertake a sea voyage are *polita* and are not to be invited at a śrāddha. These passages show that the prohibition against sea voyage affected only brāhmaṇas and even then they did not apparently become altogether unfit to be associated with. That brāhmaṇas crossed the ocean and went to such distant countries as Siam, Cambodia, Java, Sumatra and Borneo can be easily proved<sup>1810</sup>. E. I. vol. 17 p. 314 gives references to inscriptions from Borneo to show that brāhmaṇas from India migrated to that country about 400 A. D. That kings and merchants undertook sea voyages is also clear from several considerations. The Bāvera Jātaka ( vol. III No. 339, Fausbøll ) tells us that merchants from Benares went to Babylon in order to sell Indian goods. The 'Questions of Milinda' S. B. E. vol. 36 p. 269 refers to a ship-owner voyaging by sea to distant countries<sup>1811</sup>. The Rājatarāṅgiṇī refers to the sea voyage of an envoy of king Jayāpīḍa of Kaśmir to Ceylon ( IV. 503-506 ). Manu VIII. 157 prescribes that the king should allow that rate of interest which those who are adepts in sea voyages and land journeys and who understand what is required to be the interest at certain times and in certain

1810. Vide Dr. R. C. Majumdar's 'Champa' (1927) and 'Svārnadvīpa' (1937 and 1938); 'Indian influence in the Literature of Java and Bali' by Himansu Dhruvana Sarkar; 'India and Java' by Dr. Bijan Raj Chatterjee (1933); G. Gorer's 'Bali and Angkor'; 'Sanskrit texts from Bali' edited by M. Sylvain Levi in G. O. S.; Annual Bibliography of Indian Archaeology, vol. IX, pp. 39-50. The standard writings of Brandaes, Bergaigne, Kern, Krom, Parmentier and other scholars on Java, Champa and other countries of the Eastern Archipelago are not mentioned here, as they are not in English. They are referred to by Dr. Majumdar and others.

1811. The whole passage is interesting and may be set out here: 'Just as a shipowner, who has become wealthy by constantly levying freight in some seaport town, will be able to traverse the high seas and go to Vadga or Takkola or China or Sovira, Sarat or Alexandria or Coromandel coast or Further India or any other place where ships do congregate' &c. { S. B. E. vol. 36 p. 269 }.

places determine to be the proper one. Yāj. II. 38 provides for very high interest (20 per cent per month) from those who engage in trade by sea. Nār. IV. 179 says that a trader (*samudra-vanik*) who makes sea voyages is not a proper witness. The Vāyu (45. 78-80) and other purāṇas state that Bharata-varṣa<sup>1812</sup> has nine divisions called *dvīpas*, all of which are separated from each other by the sea and are not (easily accessible, that Jambudvīpa (India proper) is the 9th dvīpa and the other eight are Indra, Kaseru, Tāmrāparā, Gubhaśtinnat, Nāga, Saumya (Siam?), Gandharva, Vārūna (Borneo?). Therefore Bharatavarṣa according to Paurāṇic Geography included modern India and also Greater India. None of the ancient works at least says anything against śūdras undertaking sea voyages; but now even śūdras, probably in their desire to emulate the brāhmanas and rise higher in social esteem, think that sea voyage is forbidden to them also.

When during the latter half of the 19th century some brāhmanas went to England on a political mission or for study and returned to India, the question whether after taking the appropriate *prāyaścitta* those brāhmanas could be associated with fully as before was referred to many orthodox and learned *Pandits* (such as the late Tārānātha Tarkavācaspati) and it is creditable to the *Pandits* and gratifying to note that many of them came to the conclusion that they could be associated with by others. The two principal texts referred to were those of the Bṛhan-Nārada-purāṇa (note 1798 above) and the one from the Ādityapurāṇa translated at the head of this particular Kalivarjya. Very interesting and hairsplitting arguments and explanations were advanced by the learned *Pandits* in 1872. Some of them may be noted here. As regards the Nāradya passage, it is argued that only that sea-voyage is forbidden in the Kālī, which was a righteous act (*dharma*) in former times. In Parāśara-smṛti XII. 58 the following *prāyaścitta*<sup>1813</sup> is prescribed for brāhmana murder: 'the sinner should

1812. भारतवर्षास्य नववर्ग भवन्त्येताः नवविहिताः । समुद्रान्तरिता ज्ञेयास्ते स्वभूम्याः परपरम् ॥ इन्द्रद्वीपः कसेरुश्च ताम्रपर्वी वनस्तिमलः । गण्डीपस्तथा सोमो नववर्गस्तथा वायुः । अर्धं तु नवमस्तथा द्वीपः समस्तैवतः । वायु 45. 78-80. The same verses (except the half verse समुद्रान्तरिता &c) occur in मत्स्य 114. 7-9 and Brāhma-purāṇa 19. 6-7.

1813. तेषु कृपायवधेनः पुण्ये वत्सा तु सागरम् । दण्डयोजनमिच्छीर्णं दण्डयोजनमापयत् ॥ तामचक्षुसमाधिष्टं नलसञ्जयसञ्जितम् । मेतुं बृहद्गु सप्तद्वारं बह्महरणो व्यसोदति ॥ पराशर-स्मृति XII. 69-71.



be directed to perform the penance of going to the *setu* on the ocean; he should beg for alms on the road to the *setu* from men of the four classes that are free from improper acts, should walk barefooted and without umbrella, should declare his sin in all towns, villages and hamlets of cowherds on the way while resting there or in forests, sacred places and rivers and after reaching the sea and on seeing the *setu*, 100 *yojanas* long and 10 *yojanas* broad, constructed with heaps of stones at the bidding of Rāma by Nala he will get rid of the sin of brāhmaṇa murder'. Here brāhmaṇa murder being a most heinous offence it cannot be supposed that a mere sight of the *setu* from land would absolve the sinner and the words about the length and breadth of the *setu* would be otherwise meaningless. Therefore what is meant is that he must undertake a sea-voyage and go along the whole length and breadth of the *setu* in a vessel. Such a voyage was religious conduct in former ages, but in Kali this is forbidden. The word 'holding a *kamapṇala*' (which also was prescribed as *dharma* in former ages) conveys that a similar or analogous practice is referred to in the immediately preceding words. The words '*dvijaśyābdhau &c.*' are to be interpreted as follows: '*nanyātuḥ*' is the genitive singular of '*nauyātṛ*'. The affix '*ṭṛ*' is not the ordinary '*ṭṛ*' but it is '*ṭṛṇ*' used in the sense of 'one who habitually does a thing', according to Pāṇini III. 2. 134-135.<sup>1514</sup> Therefore the words of the *Ādityapurāṇa* apply only to a *dvija* who habitually engages in a sea voyage either as a trader or as a helmsman or sailor. When Nārada (*Dāyabhāga* 21) states that even an *aurasa* son who is hostile to his father or who is *patita* (guilty of one of the five great sins) or is impotent or is '*apayātrita*' he does not get a share of ancestral wealth, the *Vyavahāramayūkha* explains the last word as 'one who goes to another continent (other than *Jambudvīpa*) through mid ocean by means of a vessel for purposes of trade' and relies on this passage (*dvijaśyābdhau &c.*) for support. So according to the author of the *V. Mayūkha* only that *dvija* who constantly undertakes sea voyages for trade is here declared to be unfit for social intercourse though he may have taken a *prāyaścitta*, and not one who casually or once in a life undertakes a sea voyage. No text prescribes a *prāyaścitta* merely for going in a vessel on the sea. If that were intended in this passage the text would have read differently viz. '*samudre naugamanābhāve &c.*' Even *śiṣyas* have been

1514. अहोरात्रिकदुर्मत्तसायुकारिणः । कुनः पाणिनि III. 2. 134-135.

crossing the sea to Ceylon for purposes of trade. In dramas like the *Ratnāvalī* (where the *kanakān* Bāhuvya undertakes a sea voyage and a merchant from Kauśāmbī is said to have gone to Ceylon) and in romances like the *Dāśakumāracarita* frequent references are made to sea voyages to Ceylon and other countries. What is aimed to be hit when *prāyaścitta* for sea voyage is prescribed is the fact that on such voyages a man may give up for long such daily duties as the performance of *śaṇḍhyā* and may have come in very close contact with *mlecchas* as regards food etc. If he has done these two, then only he is not fit for intercourse even though he may have undergone a *prāyaścitta*. If he performs his daily duties wherever he may dwell and does not come in too close a contact with *mlecchas* he may have to perform no *prāyaścitta*, much less would he become unfit for social intercourse. The view of Medhātithi on *Manu* II. 23 that any country by itself is not unfit for the residence of an *ārya*, that if *mlecchas* overrun a country in India and permanently reside there it may become a *mlecchadeśa*, that even a *mleccha* country, if it be conquered by an Indian king and if the system of the four *varṇas* be introduced therein, would be a fit one for the performance of Vedic sacrifices, has already been noted (in H. of Dh. vol. II p. 16). It has to be remembered that the *Ādiśarva* (85. 34) states that *mlecchas* and *yavanas* sprang from Anu and Turvasu, sons of Yayāti. The *Sabhaparva* notes that Bhīma made *mlecchas* dwelling beyond the seas and in Anūpa bring tribute (30. 25-27) and that *mlecchas* came to see the Rājāsūya sacrifice along with Bhagadatta of Prāgiyotisa (*Sabha* 34. 9-10). The following propositions follow from the above discussion: (1) As the word 'dvija' is used a *śūdra* or a person of the mixed castes (*śaṅkīrṇa-jāti*) does not become unfit for social intercourse even by habitually undertaking a sea voyage, but he may have to undergo a *prāyaścitta*; (2) a *dvija* who casually undertakes a sea voyage to a place outside India either at the king's bidding or for any other purpose has to undergo a *prāyaścitta*, but if he does so he becomes fit for social intercourse; (3) a *dvija* habitually undertaking a sea voyage for trade or as a sailor would become unfit for intercourse even after undergoing *prāyaścitta*. *Manu* IX. 314, when enlarging upon the devastating power of *brāhmaṇas*, mentions that the sea was made undrinkable by *brāhmaṇas*, which, according to Medhātithi and other commentators, has in view the story in *Śānti* 343.60-61. It is difficult to say whether this story had any influence in leading to the prohibition against sea voyage.





not to be carried at all. The Maṇapārijāta (p. 16) explained that 'kamaṇḍaluvidhāraṇa' refers to perpetual studenthood, but this explanation cannot be accepted, because in the Nāradyapurāṇa (note 1798 above) both are mentioned separately. The K. V. N. (folio 3a) notes that some explained 'kamaṇḍaluvidhāraṇam' as standing for 'dīrghakālam brahmacaryam' (studenthood for long periods).

13. 'Starting on the Great Journey' (1.9). The Bṛhan-Nāradya-purāṇa (pūrvārtha 24. 16) also forbids this. According to Manu VI. 31 and Yāj. III. 55 a forest hermit, when he suffered from an incurable disease and could not perform the duties of his order, was allowed to start towards the north-east on the Great Journey (mahāprasthāna) till the body fell down to rise no more. Similarly, a man guilty of brāhmaṇa murder was allowed to meet death at the hands of archers or to throw himself head foremost into fire. Vide H. of Dh. vol. II. pp. 924-928 for Mahāprasthānagamana. Aparārka<sup>1817</sup> (p. 877-879) quotes long passages from the Ādipurāṇa to the effect that if a man suffering from an incurable disease starts on the Great Journey in the Himālaya or commits suicide by entering fire or water or by falling from a precipice, not only does he not incur sin, but on the contrary he goes to heaven. It is rather inconsistent that the Ādipurāṇa (or Ādityapurāṇa) should in one place extol the starting on the Great Journey and in another place should forbid it in the Kali age. The K. V. N. cites the instance of the Pāṇḍavas that are said to have started on the Great Journey. This makes one suspicious about the authenticity of the passages on Kālvarjya quoted from the Ādityapurāṇa by some and from Ādipurāṇa by others.

14. 'The killing of a cow in the sacrifice called Gosava' (1.9).

There were various occasions on which in ancient times a cow was sacrificed. The Anūbandhyā cow killed at the end of the Udayantyā īṣṭi in Agniṣṭoma has been referred to above (on p. 627 n. 1196). In the Madhuparka which was offered

1817. तथा आदिपुराणम् । इति श्रुतिरपि महाभारते । विहितस्तु पुनस्तथापि । बलिशोऽप्यल्लभं  
 इति करोत्यनन्तरं तथा ॥ अमाभनोपराति वा भृगुपवनं तथा । मच्छेन्महापर्वं वापि तुषार-  
 मिरिमादरात् ॥ यथायथाज्ञायां देहायानं करोति वा । स्वयं देहविनाशस्य कान्ते माते महामतिः ।  
 उत्तमव्याध्याहोषाज्ञानवाति भवेत्तद्विद् । q. by अपरार्क p. 877 and by परा. मा.  
 I. 2. 222 (as from आदित्यपुराण). अपरार्क (p. 879) further quotes 'महाप्रस्थानयात्रा  
 च कर्तव्या इति चेदपि । आश्रित्य सर्वं धर्मं च सदा स्वर्गवद्वा च सा ॥'



to an honoured guest a cow was either killed or let loose at the desire of the guest. Vide H. of Dh. vol. II pp. 543-545. A cow was killed in one of the three or four *apākā śrāddhas* (vide Khādira gr. III. 41, Gobhila gr. III. 10. 16). Āp. Dh. S. II. 7. 16. 35 states that if cow's flesh is offered in śrāddha for the *patra*, the latter are gratified for one year. There was a sacrifice called Gosava or Gomedha, that was an Ukthya in which the fees were ten thousand cows and which according to some could be performed only by a vaiśya (Kāt. Śr. 22. 11. <sup>1818</sup> 3-8). A bull was killed as an offering in the rite called sūlagava (vide H. of Dh. vol. II pp. 831-832). As flesh-eating came to be looked down upon, cow sacrifice became most abhorrent and Kalivarjya texts only register a prohibition which had been acted upon centuries before.

15. 'The employment of cups of wine in the Sautrāmaṇi' (I. 10).

The Sautrāmaṇi is not a soma sacrifice but it is a combination of an *agī* with an animal sacrifice. It was so called from 'sutrāman' (an epithet of Indra). Its peculiar characteristic was the offering of *surā* in cups. In modern times milk is offered in its place and Āp. Śr. allowed it even in ancient times <sup>1819</sup>. It was included among the seven *haviryajñas* by Gaut. (VIII. 20). At the end of the Rājasūya it was performed or in Agnicayana or for one who suffered vomiting or purging from the excessive drinking of soma. For sautrāmaṇi and the preparation of *surā* in it, vide H. of Dh. vol. II pp. 1225-1228, Bhaṭṭoji (in com. on Caturvimsati-mata p. 53) and the Nirṇaya-siṃdhu construe this to mean 'having social intercourse with one who employs *surā* in Sautrāmaṇi' but this is not satisfactory. The Dharmasīndhu explains as above (III. pūrvārdha p. 357) <sup>1820</sup>.

1818. अथनमोसौ । ... उच्यते गोसमो अनुतदुत्तमः । नैरपयज्ञ इत्येके । सत-  
जानो विशो पं दुरमुनीर्य । काला. ओ. 22. 11. 3, 6-8.

1819. चातते माजं पिलापरस्मिन् शरे सुराग्रहान् वृद्धन्ति । ... यथोद्यता वा शुः ।  
आप. ओ. 19. 2. 7, 13.

1820. सुराग्रहणस्य सुराग्रहणकर्तुः संबन्धः व्यवहारः । भट्टोजि on चातुर्विंशतिमत  
p. 53 ; सौवासण्यादिनक्षत्रेण सुराग्रहणस्य । धर्मसिन्धु III. p. 357. The कलिचरणी.  
(folio 6b) remarks, 'सुराग्रहणस्य संबन्धः यथोक्तविधिनाष्टाग्रहणम् । यन्तु संबन्धपद्व्यार-  
भ्यामुक्तारेण सुराग्रहणसंबन्धेन सुराग्रहणकर्तारं विवक्षितं तस्य संबन्धो व्यवहार इति  
व्याकृतं तत् । अस्मद्वक्तव्येण नमिसम्पत्ते लक्षणाध्वर्यव जयन्त्यात् । किं चेन्न सति श्रेया-  
स्यो सुराग्रहस्य विषयो न व्यापकत्वात् परं व्यवहारविषयः स्यात् । तस्य समान्वारविद्वद् ।'

16. 'The licking of the Agnihotrahavani and the use of it even after it was licked' (1. 11). In the Agnihotra the *sruva* ladle is held in the right hand and the *sruva* called agnihotrahavani is held in the left and the milk is poured into the latter from the milk pot with *sruva*. After the Agnihotra homa is offered the agnihotrahavani is licked twice in order to take out the remnants of the milk and after wiping it with darbha blades it is used again. Ordinarily a vessel when it is once licked by a man cannot be used again in a religious rite unless proper purification is resorted to. But this did not apply to the Agnihotrahavani and *amūṣas* of soma. Vide H. of Dh. vol. II p. 1002, n. 2663 for agnihotrahavani, p. 1005 for its licking and p. 1177 (n. 2598) for the drinking of soma from the same *amūṣas* by the several priests. The licking of the agnihotrahavani and its use constitute really the subject of the prohibition.<sup>1821</sup>

17. 'Entering on the stage of forest hermit as laid down in the texts about it' (1. 13). Gaut. III. 25-34, Āp. Dh. S. (II. 9. 21. 18 to II. 9. 23. 2), Manu VI. 1-32, Vas. IX. 1-11, Yaj. III. 45-55 lay down elaborate rules for the stage of forest hermits. Vide H. of Dh. vol. II pp. 917-929 for a description and remarks on *amnyūṣa* to be made later on.

18. 'The narrowing down or curtailment of the periods of impurity depending upon the Vedic learning and the mode of life of a person' (1. 13). 'Agha' means 'āśauca'; 'vṛtta' (mode of life) refers to tending sacred fires or maintaining oneself in the way described by Manu IV. 7-10. The general rule about the period of impurity for a brāhmaṇa on the death of a sapinda was stated by Gaut. 14. 1, Manu V. 59 and 83 to be that it was ten days and Āngiras quoted by the Mīt. on Yaj. III. 22 prescribes impurity for ten days for all varṇas, but Manu V. 59 also spoke of the period being four days, three days or one day, which, acc. to the Mīt. on Yaj. III. 28-29, refers respectively to kumbhūdhānya, one who has collected food for three days or one who collects nothing for the morrow. Dakṣa VI. 6 and Parā-

1821. मायूष्योदुग्धपानं वा कुचा क्षिराचामति द्विव मिलेति । सत्त्वा. श्रौ. III. 7. 19; लोहाया उद्विज्ज्वल्योदुग्धपानं विना परिग्रहो वसिष्ठः विहितत्वेन निर्दोषत्वाद्विवाशयः । तस्य न दुग्धमिवैवः परियहरव । स्मृतिकौस्तुभः p. 471 : अग्निहोत्रं हृत्ते यथा कुचा सा वेदाहुवी अग्निहोत्रहवनी तस्याथ होमस्तत्परं कुचापिद्विपविपविपुनवास्तथापि तेषां विद्वत्पा-  
साद्वनं कथंचिद्विवाशयः । कुचाः परिग्रहो द्विनाम्नरं होमसाधनताः । कलिवर्णवि. folio 7a.



śara<sup>1822</sup> III. 5 both state that a brāhmaṇa who keeps the Vedic fires and has studied the Veda becomes free from impurity in a day, one who has only studied the Veda (but does not tend sacred fires) becomes free in three days, while one devoid of both becomes free after ten days. Aparārka (p. 894) and Haradatta on Gaut. 14. 1 quote Brhaspati to the same effect. The Mit. remarks<sup>1823</sup> (on Yaj. III. 28-29) that the curtailment of the period of impurity is not absolute but is restricted only to certain special matters viz. the receiving of gifts, the performance of Agnihotra, the study of the Veda and such matters in which distress would be caused if the period were not curtailed. This explanation clearly proves that Viṣṇuśara (end of 11th century) was not aware of the prohibition of the curtailment of the periods of impurity or treated it with scant respect. The curtailment of the period of impurity was laid down probably because curtailment led to confusion, since a person may claim to be learned, while his neighbours may not concede that claim.

19. 'Prescribing death as the penance for brāhmaṇas', (1. 14).

Manu XI. 89 provides that if a person intentionally murders a brāhmaṇa there is no expiation for it. Manu XI. 90 prescribes death by drinking boiling wine for the sin of drinking *sura*, while Manu XI. 146 provides<sup>1824</sup> that if a man knowingly drinks wine there is no expiation for it, but only death. The Viṣṇudharmasūtra (chap. 34) states that incest with the mother, daughter or daughter-in-law is *atipātaka*, such sinners have to

1822. एकाहपुनरे विधे योऽग्निं दत्तमग्निः । उपहातेऽप्यग्निं दत्तं द्वितीयं दत्तमग्निः । इह VI. 6 and पराह III. 3, quoted by विश्वरूप on यज. III. 30; चिरादेनैव श्रुतेषु विधे वेदाग्निसेवकः । एतन्निर्वाहिनस्तु दत्तमाह वाङ्मनसः । शिलो-  
प्रापाचिर्जीविनः सप्तः श्रुतेषु द्विजैस्ततः । पापजीवावसारोपि तिष्ठः सप्तस्य वपास्त च न करोति श्रुतिं च वदतः क्षत्रके भवेत् । इह. 4. by अपराह p. 524.

1823. अथ चातोचमद्विचो वेनैव यतिग्रहादेना विनातिसाक्षिपथो न सर्वत्रायवमल-  
\*वत् । ... अतः काचित्कमेवेदमासी चसर्वाचविधार्थं न ह्यनः सर्वसंप्रवृत्तादिनोचरतिप-  
त्तमतिपत्त्येव । मिता. on यज. III. 28-29.

1824. अतिपूर्वमग्निदेव्यं यत्प्राप्तमिहमिति स्थितिः । मनु XI. 146. Most of the com-  
mentators of Manu explain this half differently as meaning 'a penance destructive of life should not be prescribed'. But this explanation is opposed to Gaut. 21. 7 ( योऽग्निं यथाग्न्याग्निदेव्यानि मनुः ) and to Medhātithi, Vide कलिकर्णमणि folio 7a 'यसु कैश्चिद् एकाग्रतां गतेषु ... स्थितिरिति मनुना यथाहो-  
रात्रं सप्तवर्षिकेनो नरणादिकं शेषदेहात् तैस्तु रहस्यप्राप्त्यन्यथाकाचविषदुष्टैवमिति  
तन्मनुः गृह्यतेऽप्युपनिषत्तुः प्रमाणाभावात् ।'.

enter fire and there is no other penance for this sin. Vide Gaut. 21. 7 also. Some smṛtis held that there was no *prāyaścitta* for certain grave sins except falling from a precipice or into fire. As a *brāhmaṇa*'s person became more and more sacred with the march of time, death ceased to be a penance for a *brāhmaṇa* sinner, however grave the sin might be. But this did not apply to a *ksatriya* or any one else (other than a *brāhmaṇa*).

20. 'Pollution through contact with a sinner' (1. 15). Manu XI. 180 (= Śānti 165. 37 = Baud. Dh. S. II. 1. 88),<sup>1825</sup> Viṣṇu Dh. S. 35. 2-5 provide that if a person continues for one year in close association (*anīsarga*) with one guilty of the grave sins (enumerated in Manu XI. 54), in respect of occupying the same conveyance or seat with him or dining in the same row with him he becomes *patita*; but he becomes *patita* immediately if he officiates as a priest for such a sinner or performs his *upanayana* for teaching him the sacred *Gāyatri* and the *Veda* or if he enters into a matrimonial alliance with him. Parāśara (I. 25-26) states that in the *Kṛta* age a person became *patita* by speaking with a *patita*, in *Tretā* by seeing him, in *Dvāpara* by partaking of food prepared in his house, but in *Kali* by actually committing a (sinful) deed and that when a grave sin was committed by a man, in the *Kṛta* age the whole district in which he lived was to be abandoned, in *Tretā* the village, in *Dvāpara* his family alone and in *Kali* only the perpetrator.<sup>1826</sup> Parāśara (XII. 79) no doubt<sup>1827</sup> says that 'sins (i. e. pollutions are caused) are transferred, as a drop of oil (spreads) on water, by sitting or sleeping together or by using the same conveyance, by speaking with or by dining in the same row with a sinner'; but this only means that to associate with a sinner is bad, but it does not mean that to associate with a *patita* immediately makes the associator himself a *patita*. The *Mit.* on Yaj. III. 261 quotes Devala<sup>1828</sup> and Vṛddha-Bṛhaspati to the effect

1825. संवत्सरेण पतति-पतितेन महाचारम् । पाजनाऽपान-द्यौताचारम् तु पाजनासमा-  
चरन् । मनु XI. 180, यौ. ध. सू. II. 1. 88.

1826. स्वर्गदेवं कृमयुगे वेतायां धाममुत्सृजेत् । द्वारे कुलमेकं तु कर्तारं च कलौ  
युगे ॥ कुले सम्भाषणात्वाप वेतायां चैव दुर्जनात् । द्वारे चाकमावाप कलौ पतति कर्मणः ॥  
पराशर I. 25-26.

1827. आत्मनाच्छवनाद्यानात्मन्भावात् महानोजनात् । संक्रान्तिरपि प्रापानि तैल-  
विभुरिवाम्बसि ॥ पराशर XII, 79, which is the same as कृमयुगे by परा. मा. II. 1.  
p. 28 (where संलापत् is read for सम्भाषत्).

1828. संलापस्पर्शनिःश्वससहपावासनासनम् । पाजनाऽपान-द्यौताचारम् संक्रान्ते  
वृणात् ॥ देवल p. by मिता. on वा. III. 261, उपार्द्ध p. 1067.



that *samsarga* arises in nine ways viz. by talk, by touch, by breathing the same air (i. e. by being in the same room), by being in the same conveyance or on the same seat or bed, by dining in the same row, by being a sinner's priest or vedic teacher or entering into matrimonial alliance with him. The Par. M. says that Parāśara held the view that there was no *pātitya* by the various kinds of contact in Kali and so provided no *prāyaścitta* for *samsarga*. The Nirpayaśindhu<sup>1829</sup> and Bhaṭṭoji make similar remarks. The Udvāhatattva says that Parāśara I. 25 is to be interpreted in this way that merely speaking or touching a *patita* or receiving money from him does not make another liable to any *prāyaścitta*, but that if the association with a *patita* goes quite beyond these, then sin may be incurred by association. So almost all the digests are agreed that the rigour of the very strict rules about *samsarga* in Manu and Baud. was modified by declaring that speech with or sight of a sinner involved no sin in Kali.<sup>1830</sup>

21. 'Undergoing (secret) expiation for the grave sins (mahāpātakas) except theft' (I. 15). Hārta (q. by Par. M. II<sup>1831</sup> part 2, p. 153) prescribes secret expiation for a brāhmaṇa who has studied dharmasāstra and committed a sin without anyone knowing it. Gaut. (chap. 24) prescribes certain expiations to be undergone secretly (without any third person knowing of such performance) for even mahāpātakas such as brāhmaṇa murder, drinking surā, incest and theft of gold. Vaa. (chap. 25) also does the same and states (25, 2) that only those who have kept the sacred vedic fires, who are disciplined and old or learned are entitled to secret expiations for sins and not other people. The Viṣṇu Dh. 8. 55 deals with secret expiations. Parāśara IX. 61 (last verse) laid down<sup>1832</sup> the general rule that one should openly

1829. आचार्येभ्यु कलिपुरे संसर्गदोषाभावमभिधेय संसर्गपापक्षितं माग्धमात् ।  
अथ एष स्तुत्यन्तरे कलौ वर्त्तमानवृत्तमये संसर्गदोषः पापेषु इत्युक्तम् । परा. मा. II part  
2 p. 90 ; it may be noted that the धर्मद्वैतनिर्णय (p. 132) quotes this passage  
and criticises it ; कलौ कर्तव्यं लिप्यते—इति व्यासोक्तः पतितसंसर्गं दोषमन्वेपि पातित्यं  
नेष्यते ; निर्णयसिन्धु III. p. 363.

1830. कलौ कर्तव्यं लिप्यते — इत्यनेन संभाषणरचनेनादिजन्मपातिपत्तरूपे निषेधः ।  
मनपमयूख.

1831. अथ ब्राह्मणस्य श्रुतधर्मशास्त्रस्य स्वरचमस्तुक्तमिदम् । स्वरचे स्वरणे धकाशं  
यथासाधम् । परा. मा. II part 2, p. 153.

1832. तस्मात्प्राप्तयेनायं स्वधर्मं सततं चरेत् । कीपातप्रापयोऽपि केनचित्कोपं विवर्त्त-  
येत् ॥ पराशर IX. last verse.

declare one's sin. The Kalivarjya text provides that secret expiation is allowed as regards only theft among the mahāpātakas in the Kali age, though in earlier ages it was allowed as to other mahāpātakas also. The Nirṇayasindhu says that secret expiation is allowed only to brāhmaṇas. According to the Dharmasindhu, in the Kali age if a man is guilty of the murder of a brāhmaṇa or of other mahāpātakas he does not avoid the consequences of falling into Hell when he undergoes an expiation but he becomes only fit for social intercourse, while as regards theft of gold (a mahāpātaka) by undergoing prāyaścitta he avoids the fall into hell and also becomes fit for social intercourse. The Kalivarjyavinirṇaya appears to hold that all secret expiations are forbidden in Kali.<sup>1833</sup>

22. 'The act of offering an animal with the recital of Vedic *mantras* to the bridegroom, to a guest and in honour of pitṛs' (1. 16).<sup>1834</sup> Madhuparka was offered in ancient times on several occasions and to several persons such as to *ṛtiks* at sacrifices, to the king, to a *śātaka*, to one's ācārya, father-in-law, paternal or maternal uncle and to a bridegroom. Vide H. of Dh. vol. II pp. 542-546 for details about Madhuparka. Originally a cow or a bull was killed for an honoured guest, later on when the cow came to be extremely sacred the flesh of some other animal was offered; when flesh-eating itself came to be looked down upon then only *pāṇasa* and other vegetarian eatables came to be prescribed. Vide H. of Dh. vol. II pp. 777-782 on flesh-eating. This half line forbids the offering of flesh to a bridegroom or to an honoured guest (in madhuparka) and the feeding of

1833. The कलिवर्ज्यनि. (folio 8a) notes, 'अत एव ब्रह्मभारदीपविष्णुपुराणादि-  
बु-लावृण्ति प्रयत्नेन स्वर्गाय पापकर्मिणः । एतदप्येव कुर्वन्ति प्रायश्चित्तकर्मिणो कलौ । मना-  
कुर्वन्ति विद्वानां निष्कृतिर्न ततो नरेत्—इत्यादि तत्र तत्र निन्दामकमेव एतदप्येव निन्दि-  
तम् ।' It should be noticed that the Nirṇayasindhu and a few others read  
संसर्गदोषतो वाच्यमङ्गापातकानि कृतिः as one word meaning 'secret expiation for  
mahāpātakas other than theft and other than association with those guilty  
of grave sins'. The स्मृत्यर्थसार (p. 2), मद्. पा. p. 16 and उद्वाहतरंग (p.  
112) read this half line as संसर्गदोषाः पापेषु मधुपर्के पशोर्घोषाः । ब्रह्मभारदी-  
पपुराणादिषु प्रायश्चित्तेन नरकनिवृत्तिर्न भवति किं हि लोके एतद्वर्णनात्मात्रं कलौ भवति ।  
स्वर्गलोकादिषु तु प्रायश्चित्तेन नरकनिवृत्तिर्वर्णनात्मा च । धर्मसिन्धु III, पूर्वार्धे p. 338.

1834. उपकरण has a technical sense. It means 'touching the ani-  
mal to be sacrificed with several *mantras*'. Manu V. 7 employs the word in  
that sense and Kullūka comments, 'पशुप्राणादीं मन्त्रबहुलेन दशोः स्पर्शनमुपाकरणम्' .  
The कलिवर्ज्यनि. (9a) quotes देवतानादिशेद्वृत्त्यै त्वं पुनमुपाकरोमि. With reference  
to śāddha the word upākaraṇa is used in a secondary sense and not in the  
literal sense. For the upākaraṇa *mantra* अमुमै...करोमि, vide आश्व. सू. I. 11. 2.



brāhmanas with flesh at śrāddhas. Comparatively so late a writer as Yaj. (I. 258-259) extols the high gratification that the *Manes* feel when flesh of various animals is offered in śrāddhas. This one prohibition includes in itself several prohibitions that are separately mentioned in other texts such as 'govadha' (in notes 1797 and 1799), the killing of an animal in a Madhuparka (in n. 1798), 'gavāśaumbha' and 'palapaitrka' (in note 1803). It is noteworthy that even so late as the first half of the 17th century Viśvanātha, a great logician, takes up the cudgels on behalf of flesh-eating by brāhmanas in sacrifices, śrāddha, madhuparka, in danger to life and when ordered by a brāhmana and charges those who totally forbid flesh-eating with being the followers of the doctrines of Bauddhas, while the latter at the same time prescribe expiations for even murderers of brāhmanas through greed of money and marry their maternal uncle's daughters or other saprōdas of their mother, though both of these latter are forbidden by the Kalivarjya texts.<sup>1835</sup>

23. 'Association with those that are guilty of intercourse with women who are not of the same varṇa, even though the former may have undergone proper expiation for the lapse' (I. 18). There was great divergence of views as regards the prāyascitta for adultery by a male with a female of the same class, of a higher class or of a lower class. Further the ancient sūtras were rather hard on the guilty parties, the harsh rules being relaxed by later smṛti writers. For example, Gaut. 33, 14-15 and Vas. 21, 1-3 prescribe for a male of a lower caste having intercourse with a woman of a higher caste death in various ways. If a brāhmana had sexual intercourse with a cāṇḍāla or śvapāka woman Parāśara (X. 5-7) prescribes that he has to undergo a fast for three days, tansure of the head together with the top knot, three Prajāpatyas, Brahmakūra, feeding brāhmanas, constant recital of the Gayatri, gift of two pairs of cows and then he becomes pure, while a śūdra doing the same had to undergo the expiation of one Prajāpatya and had to make a

1835. तस्यापि आह मनुष्यं मण्डपे ब्राह्मणाज्जाप्य च भोजनं गृह्यतिरेकेणापि भूयमन्तापशिर्द्वेऽपि चर्चनारिर्द्वे च चतुर्णामपि वर्णानामपिशेदेण भर्षणम् । नमस्तत्त्व-  
विवेकं of सिन्धनाथ (Sarasvatībhavana series, Benares, 1927) : ये तु कतिपय-  
तया मांसभादे विवदन्ते तेषामप्यन्त्यापाकमनिष्टातिरिति कश्चिद्वर्षेणोक्तमपि ब्रह्महत्यादत्त-  
संयोगाच्चित्तं धनलोभादुपदिशन्ति मातृसपिण्डान्नपते (सपिण्डापरिणये ?) च न विवदन्ते  
शमरीरदूषितचेतसो वैशानं विषाहं केन शिस्तपीया इत्यन्तं मांसविहितादिः सौमत्तमताहु-  
सागिभिः सह अमेवेति । *ibid.* pp. 22-29.

gift of two cows. If a person of a low caste has intercourse with a woman of a higher caste (e. g. a śūdra has intercourse with a brāhmaṇa woman) Saṁvarta (verses 166-167) prescribes the expiation of subsisting for a month on cow's urine and *yāvaka* (barley gruel) for him. If a brāhmaṇa commits adultery with a śūdra or cāṇḍāla woman Saṁvarta (verses 169-170) prescribes the expiation of cāndrāyana, while Parāśara (X. 17-20) prescribes a far more severe expiation. The present text prescribes that, even after undergoing expiation, men guilty of intercourse with women of castes other than their own cannot be allowed to have social intercourse with their castemen. The Dharmasindhu<sup>1836</sup> says that śūdras that have intercourse with brāhmaṇa or other women of a higher caste are hereby declared to be unfit for social intercourse even after they undergo expiation. This no doubt made for strictness in morals, but it also led to the preservation of caste exclusiveness.

24. 'Abandonment of a mother (or other woman who is to be honoured owing to relationship) because she has had sexual intercourse with one of low class' (L 19).

The provisions of the sūtras and smṛtis on the subject of expiation for adultery by women varied from time to time. Gaut. 23. 14 and Manu VIII. 371 prescribe that a woman who has intercourse with a man of low caste is to be punished by the king with being devoured by dogs. But other smṛtis and Manu himself (XI. 177) are not so harsh, but are rather humane in their treatment of adulteresses. Manu XI. 176 says that the husband should keep confined to one apartment his corrupt wife and compel her to perform the expiation which is prescribed for males in cases of adultery. Manu XI. 59 and Yaj. III. 235 regard adultery by a male (pāradārya) as an upapātaka and Manu XI. 117 and Yaj. III. 265 prescribe cāndrāyana as an expiation for all upapātakas. Vas. XXI. 12 prescribes that the wives of men of the three higher castes who are guilty of adultery with a śūdra may be purified by an expiation if no child is born of the intercourse but not otherwise. Yaj. I. 72 provides that a woman becomes free from the taint of adultery when she has her monthly illness after the adultery but if she conceives in adulterous intercourse she may be abandoned. The Mīl. on Yaj. I. 72 states that both Yaj. and Vas. are to be

1836. विनादिसीसम्पन्नेन प्रथमा दूतादीनां वागवितोषे संसर्गे निवेष्टः । धर्म-  
सिन्धु III. पूर्वांश p. 336.



understood in the same sense and abandonment does not mean driving out of the house but only not allowing her to participate in religious acts and not having sexual intercourse with her. Vas. XXI. 10 states that only four kinds of women are to be abandoned, viz. one who has intercourse with the husband's pupil or with the husband's *guru*, one who attempts to kill her husband or one who commits adultery with a man of a degraded caste. Yāj. ( III. 296-7 ) provides that to women that are *patita* the same rules apply as to men, but they should be given food, raiment and protection and that intercourse with a man of low caste is one of the three gravest sins for women. Vide Mit. on Yāj. III. 297. The present text states that a woman ( such as a mother ) who is entitled to honour from a person because of her relationship ( as mother, elder sister etc. ) is not to be abandoned and cast on the street by him, although she may be guilty of adultery with a degraded or low caste man, in spite of Vas. XXI. 10 and other texts ( such as Br. ).<sup>1837</sup> That is, this text was more humane to such women than ancient texts. Kṛpābhāṭṭa explains that ' *gurutriyāḥ* ' means ' of a brāhmaṇa woman '. Vide H. of Dh. vol. II pp. 571-573 for further remarks on adulterous women. Āp. Dh. S. 1. 10. 28. 9 requires the son always to serve and wait upon the mother even though she may be *patita*. Atri<sup>1838</sup> ( 195-196 ) and Devala ( 50-51 ) contain two verses ( almost in the same words ) which are lax as compared with other ancient texts. They say: ' If a woman conceives through intercourse with a male who is not of her caste, she becomes impure till her delivery. When she is delivered or she has her monthly illness after the intercourse she becomes like pure gold '. Atri ( 197-198 ) further provides that whether a woman willingly has sexual intercourse or is deceived or is enjoyed against her will or in secret, she should not be abandoned; one should wait till the monthly illness and she becomes purified by that illness '. This comparative laxity of

1837. अमिच्छन्ती तु या मुक्ता मुक्तौ नो वासयेद् द्यूते । महिलाः क्रीमयः शय्यां दिष्ट-  
मासौपजीविनीम् । कारयेच्छिच्छति कच्छं वराकं वा समे यताम् । जीवन्मौपमुक्ता या रण्यया  
वध्यापि वा मरेत् । वृत्त्यपि न, by विवादरत्नाकर p. 400 and by वापञ्चिकाविवेक  
p. 360 ( last half ).

1838. अन्तर्गतेषु चो यमो जीवां योमौ विविच्यते । अमुद्धा सा भवेत्तारी पारवर्तु न  
मुच्यते । विमुक्तं तु ततो शलेन रज्ज्वापि महदपते । तदा सा मुच्यते तारी विमर्शे काञ्चने यथा ।  
स्वयं विमर्शयन् वा यदि वा विमर्शयन् । बलात्तारी यमुक्ता वा चौरमुक्ता वध्यापि वा । न  
रण्यया हविता तारी न कामोदय्या विधीयते । अतुकाल उपसीत वृषकादिन मुच्यते ।  
अत्रि 195-198.

the later smṛti of Devala and Atri is remedied by this Kali-varjya text which forbids abandonment of only such women as the mother, but allows the abandonment of others when guilty of intercourse with a male of low caste. Devala prescribes expiation by *sāntapana* in the case of those women that are raped by *mlecchas* and conceive (verses 47-49). Vide also Atri 201-202. The Sm. Kau. restricts this half verse to the mother alone. Parāśara (X 24-25) prescribes that if a woman be raped once she becomes free from pollution by undergoing *Prājāpatya* after she has her monthly illness and in other cases of rape she has to undergo *Sāntapana*.

25. 'Sacrificing one's life for the sake of another' (I. 20). The Viṣṇu Dh. S. III. 45 states<sup>1839</sup> that those who are killed in saving the life of a cow, a brāhmaṇa, the king, a friend, one's wealth and one's wife go to heaven and XVI. 18 provides that even those (untouchables) who are outside (the pale of the four varṇas) and sacrifice their life for brāhmaṇas, for cows and for women and children attain heaven. The Ādityapurāṇa quoted in Rājadharmakāṇḍa (p. 91) has a similar verse. The Sāmāyama-yūka and Bhaṭṭoji quote a smṛti, 'one should at once sacrifice one's life for cows and brāhmaṇas'.<sup>1840</sup> This text forbids self-sacrifice of one's life simply for the promised reward of heaven in the cases specified. The K. V. N. (folio 9b) offers two more (rather far-fetched) explanations of this phrase, one of which is 'offering one's services as a serf to another'. This is prohibited to members of the three twice-born classes in Kali, but not to the śūdras, acc. to K. V. N.

26. 'Offering (of food) to another that remains after one has partaken of it' (I. 20). In the Madhuparka the honoured guest used to partake of a part of the offering of honey, milk

1839. गोवाङ्मन्यपत्तिनिवधनद्वाराजीवितरक्षणयो दत्तास्ते सर्वमाजः । विष्णुधर्म-  
सूत्र III. 45 : वाङ्मन्यार्थं नवार्थं वा देववामोत्तुवाङ्मन्यः । श्रीपादाम्बुपत्नी च वाङ्मन्यो  
सिद्धिकारणम् ॥ *ibid* XVI. 18; आदित्यपुराणे-...वाङ्मन्यानां यथा जैत्र रक्षार्थं हन्यते यदि ।  
स शूरो जीविनं हिलाः द्रुमुत्तमं नयते ॥ राजधर्मकाण्ड p. 91.

1840. परेण गोवाङ्मन्यद्वार्त्तनामुद्देशेन दत्तापत्तिनोपार्थं वाङ्मन्यः 'नवार्थं वाङ्म-  
न्यार्थं वा सद्यः वापानं परिवर्जितं-द्वयपदिनोक्तः । महोक्ति ०२ चतुर्विंशतिमत् p. 34. Almost  
the same words 'परेण ... मुद्देशेन निमित्तेन तदा ... गोवाङ्मन्यं बुद्धिपूर्वं ... दूरवाच्यः'  
occur in कलिवर्णनं. folio 2a. We find in the पञ्चतन्त्र (I, verse 203) this verse  
quoted, 'नवार्थं वाङ्मन्यार्थं स्वाम्यर्थं श्रिकृते तदा । स्वाम्यर्थं वसवमेवामोत्तरय होकाः  
सन्तततः ॥' and I. 420 is 'नवार्थं वाङ्मन्यार्थं च वापनयाम करोति यः । सूर्यस्य मण्डले  
भिला स पतिः परमं यतिम् ॥'





to officiate at śrāddhas.<sup>1843</sup> Manu III. 152 declares the devalaka to be unfit for being invited for śrāddhas or rites in honour of gods and Kullūka quotes Devala to the effect that one who maintains himself on the treasury of a shrine is called devalaka. It is remarkable that Vṛddha-Hārta (VIII. 77-80) says that only the worshippers of Śiva for wages are called devalaka and those of Viṣṇu are not. Acc. to the Sm. Kau. what is forbidden is the resolve to worship an image for securing a direct vision of the Deity.<sup>1844</sup> This is rather pedantic and far-fetched.

38. 'Touching the bodies of those (who are impure on the death of a relative) after the collection of the bones' (I. 22). The day on which the bones were to be collected after the body was cremated differed greatly according to various writers. The Mit. on Yaj. III. 17 notes that according to Samivarta<sup>1845</sup> (verse 38) the bones may be collected on the first, third, seventh or 9th day, that the Viṣṇu Dh. 8. (19. 10-11) prescribes the 4th day for it and recommends the casting of them into the Ganges, that some did it on the 2nd day and that therefore everyone should follow his own Grhyaśūtra. The Mit. on Yaj. III. 18 quotes Devala to the effect that, after the lapse of one-third of the period of impurity prescribed for members of the four varṇas (as in Yaj. III. 22), persons who lost relatives become touchable, that members of the four varṇas become touchable in three, four, five and ten days respectively. Samivarta (verses 39-40) states that, after the collection of bones, touching those who are under pollution due to death is allowed on the 4th, 6th, 8th and 10th day respectively in the case of brāhmanas, ksatriyas, vaiśyas and sūdras. The present Kaliurjya text forbids this and becomes stricter as to the rules about impurity.

29. 'The performance by a brāhmaṇa of the duties of the killer of the victim in a sacrifice' (I. 23).

1843. स्मृत्पुनरम् । सुबुद्धा देवलकं चैव श्रवसां जलमादिहेत् । देवार्चनपरो विप्रो विनाशो वसतरत्नम् । असौ देवलको नाम हव्यकर्मेषु गृहीतः । अपराकं p. 923 ; देवकोऽप्यजीवी च नामा देवलको भवेत् । अपाहर्कः स विज्ञेयः सर्वकर्मसु सर्वदा ॥ देवल q. by अपराकं p. 430 and कुल्लूक on Manu III. 152 (śrāṭ hall).

1844. यतिरेत्यर्थेऽभिज्ञयोऽपरोक्षज्ञानपरः । ... ततश्च देवतासाक्षात्कारकरो यः यति-  
मार्चनार्थः पूजाफलनिमित्तं प्राप्तुं तदुद्देशकः सङ्गृह्यो विदिर्यते । उक्तधामसौ पूजाफलत्वेन  
देवतासाक्षात्काराय पौराण्यव्यादिगोचरानेकव्यसिद्धत्वात् । स्मृतिको. p. 473.

1845. यथेष्टेऽह्नि तृतीये च सप्तमे नवमे तथा । चतुर्थेऽह्नि कर्तव्यमस्ति सञ्चयनं द्विजैः ॥  
ततः सञ्चयनादूर्ध्वमङ्गस्वर्गो विधीयते । चतुर्थेऽह्नि विप्रस्य षष्ठे वै क्षत्रियस्य च ॥ अष्टमे  
दशमे चैव स्पर्शः स्पर्द्धेयपशूजयोः । सर्वार्थे 38-40.



The animal in a *brauta* sacrifice was to be killed by choking it and strangling it. The person who did so was called *śamitr*. Different views were entertained as to who was to be the *śamitr*. Acc. to Jai. III. 7. 28-29<sup>1846</sup> the *adhvaryu* himself was to be the *śamitr*; the usual opinion was that he was to be some one other than the *ritviks*. The *Āv. Śr.* (XII. 9. 12-13) shows that he may be a *brāhmaṇa* or a non-*brāhmaṇa*. For further details vide H. of Dh. vol. II. pp. 1121-23, n. 2504. As animal sacrifices themselves came to be looked down upon or even forbidden, this text forbids a *brāhmaṇa* from being a *śamitr*.

30. 'The sale of the soma plant by *brāhmaṇas*' (i. 23).

*Soma* beverage was to be drunk only by *brāhmaṇas*. The *soma* plant had to be purchased and there was a symbolic haggling for it. The vendor of *soma* in ancient<sup>1847</sup> times was, acc. to Kāṭ. Śr. VII. 6. 2-4 and *Āp. Śr.* X. 20. 12, either a *brāhmaṇa* of Kuteśa gotra or any *brāhmaṇa* or a *sūdra*.<sup>1848</sup> In later times, though Manu XI. 7 (= Śānti 165. 7) and Nār. (dattāpradānika 7)<sup>1849</sup> allow a *brāhmaṇa* who has wealth sufficient for the maintenance of himself and his dependents for three years or more to perform a *soma* sacrifice, yet Manu III. 158, Yaj. I. 165 and Vas. 14. 3 hold that a *brāhmaṇa* who sells the *soma* plant is unfit to be invited at a *śrāddha* and that one should not partake of food at his house. Manu X. 88 forbids a *brāhmaṇa* to sell water, arms, poison, *soma* &c. Vide H. of Dh. vol. II. pp. 1141-1143 for purchase of *soma* and the dramatic haggling for it.

31. 'Allowing a *brāhmaṇa* householder to eat food at the houses of four classes of people among *sūdras* viz. his slave, his cowherd, a hereditary family friend and one who cultivates his fields on the basis of paying a half or other portion of the produce to him' (II. 25-26).

Gaut. 17. 6, Manu IV. 253 (= Visṇu Dh. S.<sup>1850</sup> 57. 16), Yaj. I. 166 and Parāśara XI. 19 say that a *brāhmaṇa* may eat the

1846. शबर on Jai. III. 7. 29 remarks, 'शमित्रमपि आश्वर्येण समान्नावाद्ध्यर्षुणा कर्तव्यम् । तस्याष्टमनाद्वर्ष्यः क्षमिता ।'

1847. कौत्साद्याजानं क्रीणीवाद्ध्यर्षमाद्या माह्वणविस्तुष्यवाद्याप्यनाह्वणादिति । आप. श्रौ. X. 20. 12.

1848. वररु जैमिनिर्वाचिके विसे पर्वते सूत्रवृत्तये । अधिकं वापि विसेत सप्तोमं वाह-मर्षमि न मारुद (बृहत् 7). This is the same as Manu XI. 7, but नारद reads विषं for मारुद.

1849. अर्थिकः कुलमित्रं च दासगोपालनापिता । एते सूदेव भोग्याश्च वध्यान्मानं निषेदयेत् । निषेधमर्षसूत्र 57. 16.

food of these four and of his own barber. Haradatta on Gaut. 17, 6 and Aparārka (p. 344) remark that a brāhmana can take the food of these persons among śūdras only in the event of extreme calamities. From this it appears that up to the 12th century A. D. the peremptory prohibition contained in this text was either unknown or was not much respected. The exclusiveness of caste in matters of food and marriage was made more strict by the Kāṭhavarjya texts. Vide above (pp. 869 and 885) as to how Parāśara himself was overruled by this text.

32. 'Pilgrimages to very distant holy places' (I. 26).

A brāhmana was called upon to tend his Vedī or grhya fires. If he went to distant places on pilgrimage this duty would be interfered with. It is provided by Āp.<sup>1850</sup> Sr. IV. 16. 18 that even when on a journey the *agnihotrin* has, after turning his face in the direction of his fire altar, to go mentally over the whole procedure of his daily fire worship and the Darśa-pūrpamāsa. The Gobhila-smṛti II. 157 says the same. The Smṛtikaustubha<sup>1851</sup> says that this prohibits pilgrimage to holy places beyond the sea or on the borders of Bharatavarṣa. This text prohibits a brāhmana from going to distant places on pilgrimage, but it does not prevent him from undertaking a journey for earning wealth for performing sacrifices. K. V. N. (folio 10a) quotes a text of Satyavrata to this effect.

33. 'The rule that a pupil should habitually observe the same behaviour towards the wife of the guru as towards the guru himself' (I. 27). Āp. Dh.<sup>1852</sup> S. I. 2. 7. 27, Gaut. II. 31-34, Manu II. 210, Viṣṇu Dh. 8, 32, 1-2 prescribe that a student should perform the same acts of honour and obedience towards the wife or wives of his teacher as towards the teacher (except holding her feet in doing obeisance and eating the leavings of the food). As students were often grown-up young men and the teacher's wife might often be a young lady, Manu II. 212,

1850. यमस्य विद्वारमभिसुखी यात्रमानं जयति । आप. श्री. IV. 16. 18 ; मनसा नैरपके कर्म पश्यन्मनसतन्द्रितः । उपविश्य श्रुतिः सर्वं पद्याद्यालमनुवृजेत् । गोभिल II. 157.

1851. या च यत्पुत्रदेवमन्तरीर्ष्याया यैराणी सा कर्तुं नेति । स्मृतिकौ. p. 478 ; पुनाम्यर्जपितुं पुनः भवामो ह्यतिर्ज्ञात्रिणः । धर्मैर्यस्यमनसिदिग्धा त्रीर्षांश्चर्षी न तु वजेदिति सत्यव्रतमरणार्हम् । कालिदासपत्रि. folio 10a.

1852. अथत्रोपसङ्गग्रहणानुविष्टाज्ञानाच्चाचार्यैर्द्वान्चार्यद्वारे वृत्तिः । आप. ध. I. 2. 7. 27 ; तद्वार्थेद्वयेषु चैवम् । नोविष्टाज्ञानस्यापनयनसाधनपादुपज्ञानोपसङ्गग्रहणानि । विप्रोप्योपसङ्गग्रहणं दुश्चार्थोपात्तम् । नौ. II. 37-39.



216, 217 (that are the same as Viṣṇu Dh. S. 32. 13-15) provide that a pupil full twenty years old should not show honour to the young wife of his teacher by clapping her feet, but that he may prostrate himself on the ground before the teacher's young wife in performing obeisance and that he may hold her feet in obeisance only (once) when he returns from a journey. This text accepts the principle underlying the special rules laid down by Manu and Viṣṇu and prohibits the daily touching of the feet of the guru's wife on the part of the pupil. The Sm.<sup>1853</sup> Kau. and Dharmasindhu (III p. 353) hold that this sets aside the rule laid down in Yaj. I. 49 that a perpetual student may stay till his death with his teacher or with the teacher's son or (in default of both) with the teacher's wife.

34. 'The modes of maintenance conceded to brāhmanas in times of distress (or calamity)' (I. 28).

The special modes of maintenance prescribed for brāhmanas were receiving gifts, teaching the Veda and officiating as priests (Gaut. X. 2, Āp. Dh. S. II. 5. 10. 5, Manu X. 76, I. 88, Vas. II. 14, Yaj. I. 118). But it was recognised from very ancient times that if a brāhmaṇa could not maintain himself by following the above modes of earning wealth he could in a season of distress pursue the avocations peculiar to a kṣatriya or vaiśya (Gaut. VII. 6-7, Baud. Dh. S. II. 2. 77-81, Vas. II. 22, Manu X. 81-82, Yaj. III. 35)<sup>1854</sup>. Vide H. of Dh. vol. II. pp. 118-133 for detailed treatment of this matter and for the restrictions imposed even when brāhmanas were allowed to follow the avocations of kṣatriyas and vaiśyas. The Kalivarjya prohibition is merely one on paper. From ancient times till now brāhmanas have pursued all sorts of avocations and hardly any importance has been attached to this dictum.

35. 'Not accumulating any wealth (or grains) for the morrow' (I. 28). Manu IV. 7 and Yaj. I. 128 provide that brāhmanas are of four kinds, viz. those who accumulate grain of the capacity of a *kusṭha*, those who accumulate grain of the capacity of a *kumbhī*, those that accumulate grain enough to satisfy

1853. गुरुपत्नीसमीपे गुरुद्वाराभावे चिरं निधतिविहिता सा निदिश्यते। न तु गुरुवत्सति-  
... इति मन्त्रका पूजा 'कृत्तिसीलतेति पदेन पुनस्तनभिधानात् । स्मृतिकौ. p. 478; but  
कलितवर्षेति. folio 10a assay, शिष्यस्य गुरुपत्नीं गुरुवद् धृतिः—गुरुवत्पतिपूज्यास्तु सर्वथा  
गुरुमोक्षे इत्यादि मन्त्रका ।

1854. आचेष कर्मणा जीरेद्विस्तं वाप्यापादि द्वितः । निस्तीर्णं तानवाप्तान्ने यान-  
पित्वा गुरुतेत्यभि. ॥ वा. III. 35.

their needs for three-days and those who do not collect grain even for the next day. The *smṛtis* prescribe that each later one is superior in merit to each preceding one. The commentators differ as to the meaning conveyed by *kusūladhānya* (some holding that it means one who has accumulated grain for three years, while others say it means one who has grain for 12 days) and *kumbhidhānya* (a person accumulating grain for a year, or grain for six days). Vide H. of Dh. vol. II, p. 110, note 234 and p. 641 note 1502. The Mit. on Yaj. I. 128 says that the advice not to accumulate corn even for three days or one day is not addressed to all *brāhmaṇas*, but to those only who are called *yāvāvara*<sup>1855</sup>. This explanation of the Mit. indicates that the *Kaliwarjya* text on this point was either not known to the Mit. or was not much thought of by it. The *Kaliwarjya* text provides that the ideal of extreme poverty and absence of acquisitiveness for *brāhmaṇas* was not to be insisted upon in the *Kali* age.

36. 'The acceptance of the kindling of a log of wood (i. e. setting up sacred Vedic fire) at the time of the *homa* of *Jātakarma* for the purpose of securing long life to the child born to a person' (I. 29). The *arāṇis* are two logs of *Aśvattha* tree from which fire is produced by attrition, which (fire) is used for kindling the *gārhapatya* fire. In certain *sākhās*, it is the practice to kindle fire from *arāṇis* and to use it for the *homa* in the *Jātakarma* rite. This fire was to be used in the subsequent rites for the child such as *cūḍā*, *upanayana*, marriage. It was supposed that this enabled the child to live long.<sup>1856</sup> The Śaṅk. K. quotes a *parīśiṣṭa* text to this effect.<sup>1857</sup>

37. 'Constant journeys by *brāhmaṇas*' (I. 30). The *Mahābhārata* (*Śānti* 23. 15)<sup>1858</sup> says, 'As a snake swallows mice hiding in holes, the earth swallows two persons viz. a king who does not fight (an invader) and a *brāhmaṇa* who does not engage

1855. For the two kinds of *brāhmaṇas*, viz. *śālina* and *yāvāvara*, vide H. of Dh. vol. II pp. 641-42 n. 1502-1505.

1856. अग्निहोत्राय जातकर्महोत्रे राजादीनिर्वाधर्मरणिपरिवहो विहितः । कुष्णभट्ट on नि. सि. pp. 1299-1300.

1857. परिशिष्टान्तरे तु कुमारस्य जातस्य अग्नीं योजयितुमुक्तम् । जातस्य अग्निराग्नीं वाग्वागग्निं तु मन्थयेत् । ... तस्मिन् कुमारकर्मणि विनाशान्तानि कारयेत् । म. कौ. under जातकर्म.

1858. सुमिरतो विमिरति सर्पो विलसमानिव । राजानं चाविरोद्धारं चाद्वर्जं चाध्रवा-  
(सिन्धु ॥ अग्नि 23. 15. Vide also *Sabha* 55. 14, *Śānti* 37. 3 and *Anuśāsana* 36. 16 for almost the same words.



in travel' (for acquiring learning from famous teachers). This text only forbids taking aimlessly to long journeys but not those for study or for religious purposes.

38. 'Blowing on fire with the mouth' in order to kindle it into flames (I. 30). Gaut. IX. 32, Manu IV. 53 and Brahmapurāṇa 221. 102 forbid the blowing on fire with the mouth (as in doing so it is likely that drops of saliva from the mouth may fall into the fire and pollute it). Haradatta on Āp. Dh. S. I. 5. 15. 20 notices that in the Vājasaneyi Śākha it is said that fire should be kindled into flames by blowing upon it with the breath from the mouth since it sprang from the mouth of the Creator (as stated in the Puruṣasūkta, Rg. X. 90. 13). Therefore, acc. to Haradatta and the Gobhila-smṛti (I. 135-136)<sup>1859</sup> the *śrauta* fire could be kindled by blowing upon it with the mouth, but *smṛta* fire or ordinary fire should not be kindled in that way (but only by using a fan or a bamboo cylindrical piece). The Kalivarjya text forbids blowing with the mouth even on *śrauta* fire.

39. 'Allowing social intercourse to women who have become polluted by rape and the like (when they have performed *prāyaścitta*) as prescribed in the *śāstras*' (I. 31).<sup>1860</sup> Vas. 28. 2-3 state, 'when a woman is polluted by being raped or kidnapped by a thief, she should not be abandoned; one should wait till her monthly illness (making her undergo certain expiations till then) and she becomes pure after it.' Atri (V. 2-3) has the same verses, which are quoted (from Vas.) by Viśvarūpa on Yaj. III. 256 (p. 133. Tri. ed.) and explained at great length. The Matsyapurāṇa 227. 126 is liberal enough to say that the man who commits rape should be punished with death but the woman raped incurs no blame. Parāśara (X. 27) provides that if a woman is raped by an evil-doer only once she becomes pure by undergoing the *Prājāpatya* expiation and after the following monthly illness. Even so late a smṛti writer as Devala provides that if a woman of any class is raped by *mlecchas* and she conceives she can be purified by the expiation of *Santapana*.

1859. सुखेनेके प्रमत्तपतिं सुखाद्वन्द्वोदयनायन । नास्ति सुखेनेति च वाह्यकिं  
बोधयन्ति वत् ॥ गोविन्दरसुनि I. 136. This is q. by the रसुनिच. I. p. 312. नास्ति  
सुखेन is मनु IV. 53.

1860. दोषा यमं विधेयं वा म्लेच्छात्कामादकामका । नाह्वयी शशिवा वैया शुद्धा  
वर्त्येता च वा । अमृत्यममृतं कुर्यात्तरसाः शुद्धिः कथं भवेत् । कथं सामनयनं शुद्धिर्हि-  
यमिष्य पाचनम् ॥ देवत 48-49.

But this text is harsher on such innocent and unlucky women when it says that they cannot be restored to social intercourse even after undergoing expiation.

40. 'Begging of food by a *sannyāsin* from members of all varṇas (including śūdras) according to the rules of the śāstra' (I. 32). The Sm. M. p. 201 (on varṇāśrama) quotes Kāthaka Brāhmaṇa,<sup>1861</sup> Āruṇi Up., Parāśara (in prose) to the effect that a *yati* may beg for food from members of all varṇas. Baud. Dh. S. II. 10. 69<sup>1862</sup> also quotes a verse which allows the begging of food from all varṇas to a *yati*. Vaa. X. 7 requires a *yati* to beg at seven houses not selected beforehand and in X. 24 states that he should subsist on what food he gets at the houses of brāhmaṇas.<sup>1863</sup> The present text requires even the *yati* to observe caste rules as to food.

41. 'Not using for ten days fresh rain water' (I. 33). Haradatta on Āp. Dh. S. I. 5. 15. 2, Bhaṭṭoji on Catur. (p. 54), Sm. Kau. p. 479 quote a verse, 'she-goats, cows, she-buffaloes and brāhmaṇa women become free from impurity (due to delivery) after ten nights and so does fresh rain water accumulated on the ground'. According to this the long period of ten days in the case of rain water is set aside. But Bhaṭṭoji notes that according to another smṛti 'rain water falling at the proper season is pure, but it is not to be used for drinking for three days; when rain falls at an unusual season rain water is impure for ten days and if a man drinks it within that period he should abstain from food for one day and night'. Bhaṭṭoji remarks that the Kaliavarjya text only sets aside waiting for ten days, but does not set aside the rule against drinking it for three days.

42. '(Payment of) the fee demanded by the teacher' at the end of the period of brahmācārya (I. 33).

1861. काठकब्राह्मणे 'चतुर्वर्णेषु भैक्षार्थं चरेत् पायिपत्रेणादानं कुर्वादीषधत्वा-  
न्वितरायान्धारणार्थं यथा मेवोद्विजिनं जायते ।' स्मृतिह. (वर्ण.) p. 201.

1862. भैक्षं वा सर्ववर्णेषु एकाग्रं वा द्विजातिषु । अपि वा सर्ववर्णेषो न चैकाग्रं  
द्विजातिषु । बौ. ध. सू. II. 10. 69.

1863. महाभारतपञ्चसङ्ख्यितानि चरेद्विश्राम् । ब्राह्मणकुले पापहमेव तद्वृत्तं  
सारं भक्त्यर्थमुत्सर्जयम् । बसिष्ठ X. 7 and 24.

1864. अत्रा गावो महिषश्च ब्राह्मणी च पशुनिका । दशरात्रिण शुश्रूषन्ति यमिहं च  
नवोद्वेकम् ॥ १. by हरदत्त on आप. ध. सू. I. 5. 15. 2, 'काले नवोद्वेके शुद्धे न पिबेच्च  
पशून् च तत् । अकाले तु द्वादशं स्वारधीना मायाद्विनिशम् ॥ इति स्मृत्युक्तस्य द्वादशपति-  
वेधपर्यं प्रतिपत्तवो न तु व्यवहतिवेधश्चेति द्वांसंति । भट्टोजि on चतुर्षि, p. 53.



The ancient practice was to make no agreement as to fees for teaching. Vide Br. Up. IV. 1. 2. Gaut. (II. 54-55) prescribes<sup>1865</sup> that at the end of his studies the student should request the teacher to accept the wealth that he could offer or ask the teacher what should be given and after paying or doing what was required by the *guru* or if the teacher permitted him to go without demanding anything the student should take the ceremonial bath. Vide Manu II. 245-246 and H. of Dh. vol. II. pp. 360-361 for details. Yaj. I. 51 provides that at the end of his studies the student may give to the teacher what he desires (or a cow) according to his ability or may with his permission take the ceremonial bath (without paying anything). On account of these provisions we have stories in the ancient literature that very rarely teachers or their wives made fanciful demands. This Kalivariya text only sets aside the requirement of paying what the *guru* demands, but does not prohibit the voluntary gift of a fee by the student.<sup>1866</sup>

43. 'The engagement of a *śūdra* for such acts as cooking and the like in the houses of *brāhmaṇas* and the rest' (I. 34). Āp. Dh. S. (II. 2. 3. 1-8) requires that<sup>1867</sup> the food for *Vaiśva-deva* should be prepared by pure men of the first three *varṇas* and also optionally allows a *śūdra* to be a cook for an *Ārya* provided he is under the supervision of men of the first three *varṇas*, provided he sips water whenever he touches the hair, any limb or his garment, provided he cuts the hair (on his head and his body), the beard and nails every day or every 8th day of the month or on the new and full moon day and provided he bathes with the clothes on. It is this permission that is set aside by this Kalivariya text.

44. 'Suicide of very old people by falling into fire or from a precipice' (I. 35).

This is analogous to No. 13 above. Atri did not condemn suicide in certain cases. He states,<sup>1868</sup> (verses 218-219) 'if one be

1865. विद्यान्ते सुदुर्येन निमग्नवः । कुत्सासुजातरस वा स्वानम् । मू. II. 54-55.

1866. विद्यान्ते सुदुर्येन वा दक्षिणादाने वा सागर्दीपनवे आहुत्येन सुतदुत्तराय । न तु सुते दक्षिणामात्रं चोदितेतिपद्वैरुपापत्तेः । स्मृतिकौ. p. 479.

1867. आर्याः पक्ता वैश्वदेवेऽनसंस्कारैः स्तुः । ...आवापिहित वा शूद्राः संस्कारैः स्तुः । तेषां स पक्वाश्चमनकर्ता । अधिकनहस्तः केदामस्तुल्यमनस्यपानम् । उदकोपरमर्शने च सह नासता । अयि वाहसोर्ध्वे पर्वतु वा वपेत् । आय. ध. सु. II. 2. 5. 1-8.

1868. ब्रह्मः क्षीयस्सुवेत्सुः श्रयासथानभिषङ्गाक्यः । आत्मानं पातयेद्यसु भुवग्य-मशानामुच्यते । तस्य विराजनासीचं दितीये त्वनिधनजयम् । कुरीये वृद्धं कुत्सा यत्तुपे आहुत्याचरेत् । अयि 218-219 q. by मिश्रतिथि on मनु V. 89, निता. on वा. III. 6, अवतारं p. 943.

old (beyond 70), if one cannot observe the rules of bodily purification (owing to extreme weakness), if one is so ill that all medical help is discarded, and if one in these circumstances kills himself by throwing himself from a precipice or into fire or water or by fasting, mourning should be observed for him for three days and śrāddha may be performed for him.' Aparārka (p. 536) quotes several smritis to the effect that a very old man or one suffering from very serious illness, one who has no desires left and has carried out his tasks may bring about his death by entering fire or water or falling from a precipice and he will incur no sin. Vide H. of Dh. vol. II. pp. 926-927 for further details. This text may also be taken as forbidding suicide by falling from a precipice or into fire as an expiation in the case of those that are guilty of mahāpātakas knowingly committed. The Mīt. on Yaj. III. 226 quotes a smṛti to this effect<sup>1869</sup>. The Śuddhitattva holds (pp. 234-235) that suicide by entering water and the like is allowed in Kālī only to śūdras and forbidden to brāhmanas and others.

45. 'The performance of ścamana (purificatory sipping of water) by śīstas in as much water as is sufficient for slaking the thirst of a cow' (I. 36).

Manu V. 128, Vas. III. 35, Baud. Dh. S. I. 5. 65, Yaj. I. 192, Viṣṇu 23. 43 provide<sup>1870</sup> that water collected on the ground is pure (and may be used for ścamana) provided it is sufficient in quantity to slake the thirst of a cow. But this text forbids on hygienic grounds the use of small quantities of water collected on the ground for sipping and similar purposes.

46. 'The residence of an ascetic in the house near which he happens to be in the evening' (I. 38).

Acc. to Āp. Dh. S. II. 9. 21. 10 and Manu VI. 43, 53-56, an ascetic was to kindle no fire, was to be houseless and was to beg only once a day in the afternoon or evening when no smoke ascends from the kitchens of people, when the embers have been extinguished, when people have finished their meals &c. Vas. (X.

1869. यः कामतो महापातं गतः कुर्यात्कपेयम् । न तस्य निष्कृतिर्दंडा भ्रातृनिपुन-  
नादते ॥ q. by मित्रा. op. cit. III. 226. जलमर्षादिकं तु कालौ गृह्यते । नाह्नादीनां तु  
आदित्यहराणेन सपुष्पाद्यर्चयज्वरणांश्चेन निषेधम् । शुद्धितत्त्व pp. 234-235.

1870. क्षुत्ति गोतृतिष्ठतोयं पृक्तनिरपं नदीपानम् । या. I. 192; अत्रादपि यः  
गोतृपानममर्थाः सः । नमिह III. 35; अपः पवित्रं समिपता गोतृनिर्पातु जायते ।  
नो. य. सू. I. 3. 63.



12-15) provides<sup>1871</sup> that a *sannyāsin* was to change his residence frequently, was to stay at the boundary of the village or in a temple, or in an empty house or at the bottom of a tree and should constantly live in a forest. Śāṅkha (VII. 6) states that an ascetic should stay in an empty house or he may stay wherever he may be when the sun sets. This provision of Śāṅkha is set aside by the Kalivarjya text. Another meaning of the words, according to Kṛṣṇabhaṭṭa on the Nir. 8. (p. 1310), is that this runs counter to the recommendation of Manu VI. 56 that an ascetic should go for begging to the houses in a village in the evening when all smoke from kitchens has ceased i. e. by this text he is allowed to beg in the noon. In a way this appears to be a better explanation.

The above is a complete list of all Kalivarjyas quoted from the Ādityapurāṇa (except one or two). Some of the Kalivarjyas not included here, but included in other texts cited above will also be now set out for the sake of completeness of treatment.

47. 'Resorting to *sannyāsa*'. Vyāsa quoted above (n. 1793) forbade *sannyāsa* in the Kali age after 4400 years of it had elapsed, but then Devala<sup>1872</sup> made an exception to this extent that as long as the division of society into four varṇas existed and as long as the Veda was studied *sannyāsa* could be resorted to even in Kali. The Nir. 8. explains that what is forbidden is the *sannyāsa* with three *daṇḍas* and not the *sannyāsa* with one *daṇḍa*. Baud. II. 10. 53 (*ekadaṇḍī vā*) gives an option that a *sannyāsin* may carry three staffs or one, while Yaj. III. 58 speaks of a *gṛhi* as only *tridaṇḍī*. *Daṇḍa* means a staff and also 'restraint, curbing'. Manu XII 10 (same as Dakṣa VII. 30) declares that that man is called *tridaṇḍī* who has restraint over his body, speech and mind. Dakṣa<sup>1873</sup> also says that a *gṛhi* is not called *tridaṇḍī* by carrying three bamboo staffs, that he is called *tridaṇḍī* who has

1871. अनिरासं नमसि वसेत् । ग्रामाग्रे देवद्वारे द्युवागारे वा वृकमूले वा । अरण्य-  
निवृत्तः । वसिष्ठ X. 12-13 and 15 : द्युवागारनिवृत्तः स्वायत्तसाधुर्गृही भूतिः । बृह  
VII. 6. The words वससाधुर्गृही भूतिः occur also in वसपर्व 12. 11. गृहसाधु  
प्रातःपण्यमपरः सार्वभौदो यज्ञोपवाचकः । ... भिक्षाद्यर्थं दधिद्वयं तुष काले गृहवासो न वृक-  
इति साधुर्गृह । अथ वृक भूतिः । वामं यथिदिद्व्युवागमिति । स्तुतिर्को. p. 479.

1872. वायव्यर्णविभागेति पापद्वन्द्वः यवति । तावन्व्यवसायोपिद्विद्वेयं च कर्तव्यं तु कालो  
युगे ॥ देवल q. by वि. नि. III पूर्वार्धे p. 370, स्तुतिर्द्व. (वर्णाश्रम p. 176 quoting  
it as from व्यास ), दधिपर्वमेव p. 2-3.

1873. वैश्वेन विद्वद्भ्यो न विद्वद्भ्यो कथयते । अथतमद्वन्द्वयुक्तो वा स विद्वद्भ्यो  
कथयते । दृक् VII. 29. Several verses of दृक् VII are quoted by अपराक्ष on p. 933.

the spiritual restraint in him (v. 29). In l. 12-13 Dakṣa says that just as a girdle, deer skin and a wooden staff are the outward signs of a vedic student, so three staffs are the peculiar sign of a yati. Vide H. of Dh. vol. II. pp. 937-938 for further details. If the Kaliurjya text were meant to forbid sannyāsa altogether, it must be said that it was never honoured and even now thousands become sannyāsins every year. If, as the Nir. S. says, this text only forbids the carrying of three dāṇḍas, it is a meaningless prohibition, giving importance only to outward symbols and not to the substance of the matter.

48. 'The observance of *agnihotra*' or 'the acceptance of three fires'. Vyāsa (n. 1793) forbade the performance of *śrauta agnihotra* along with *sannyāsa* in Kali, but an exception was made by Devala in favour of its observance as also of resort to sannyāsa on the grounds stated above (in No. 47). Some digests and authors such as the Nirayāsindhu<sup>1874</sup> and Bhaṭṭoji explain that *agnihotra* of the *sarvādhāna* type is forbidden in Kali, but that of the *ardhādhāna* type is allowed. *Agnihotra* means 'ādāna', that is, setting up of the *śrauta* fires. When a man consecrates the three *śrauta* fires he may do so with half of his *smārta* fire and keep up the other half of the *smārta* fire. This is called *ardhādhāna*. If he does not keep the *smārta* fire separate, it is *sarvādhāna*. Laṅkāśi quoted by the Nir. S. (III. p. 370), Bhaṭṭoji and others states this. The Mīt. on Yaj. III. 45 mentions these two modes. Therefore, according to these explanations, *sarvādhāna* was allowed in former ages (and acc. to one interpretation up to 4400 years of Kali), while in Kali (or at least after 4400 years of Kali) only *ardhādhāna* is allowed.

49. 'Human sacrifice' (vide note 1798 giving extract from Nārada-purāṇa).

The Tai. Br.<sup>1875</sup> (III. 4. 1-19) contains a description of the procedure of human sacrifice. The oldest texts even do not show that a human being was killed. The whole procedure is

1874. अग्निधामं स्मृतं श्रौतस्मार्तान्गोस्तु द्वयंकृच्छ्रः । सार्धधामं तपोवैककृच्छ्रः पूर्व-  
पुत्राभया । श्रौताग्निं ५. 10 स्मृतिच. acc. 10 निर्जयसिन्धु III. p. 370. अथ पूर्वपुत्रा-  
भित्तये श्रौताग्निनाम्ने पूर्वपुत्रानि कृताग्नीगोपेक्षार्थं । अन्ये तु पुण्यस्य पूर्व कर्त्ते पूर्वो भागः  
स अन्तर्गन्धस्य सार्धधामं पूर्वो कर्त्तव्यश्चाप्यन्तर्गन्धस्य तपोवैककृच्छ्रः तस्मिन् भागे सार्धधामं  
कार्यं तदुक्तं तु पाश्चात्त्यविभागोऽस्ति वाक्यस्य तपोवैककृच्छ्रस्यार्थं धामं तस्मिन् भागे । नि. सि.

1875. जह्यते ब्राह्मणमात्रं जवाप राजम्भम् । मरुद्गो वैश्यम् । तपो जह्यम् ॥  
तै. ब्र. III. 4. 1.



symbolical. The Vāj. S. (XXX. 5 ff.) has many passages in common with the Tai. Br. The Tai. Br. III. 4. 1 (= Vāj. S. 30. 5) begins, 'the brāhmaṇa should be offered to brahman (spiritual power), the kṣatriya to kṣatra (military power), the vaiśya to the Maruts' &c. Acc. to Āp. Śr. XX. 24, a brāhmaṇa or kṣatriya performs this sacrifice, whereby he attains power and valour and all prosperity. There are eleven sacrificial posts and eleven animals to be offered to Agni and Soma. After the rite of *parigraharāga* is performed on the brāhmaṇa and others, they are presented to the several deities and then discharged from the sacrificial posts, eleven goats are killed and oblations of their flesh and limbs are offered. Acc. to the com. on Vāj. S., it is begun on the 10th day of the bright half of Caitra and goes on for 40 days, which are occupied with 23 *dikṣā*, 12 *upavāsa* and five *autya*s (days on which soma is extracted). After this *yāga*, the *yajamāna* usually resorted to a forest as a sannyāsin.<sup>1876</sup>

50. 'Aśvamedha' (n. 1798). The Tai. S. V. 3. 12. 2 states,<sup>1877</sup> 'he who performs the Aśvamedha becomes free from (the sin of) brāhmaṇa murder'. In spite of this Vedic authority the Brhān-Nāradya and other purāṇas prohibited it. But no one heeded this prohibition and numerous historic kings performed this sacrifice from at least 200 B. C. to Jayasing in the 18th century A. D. Vide H. of Dh. vol. II. pp. 1238-1239 and pp. 70-71 above for numerous historical performers of Aśvamedha.

51. 'Rajasūya' (acc. to the Garuḍapurāṇa, p. 929 above). This was a very complex rite extending over two years and could be performed only by a kṣatriya. Vide H. of Dh. vol. II. pp. 1214-1223 for a brief description. The Rajasūya was performed by the Kalinga Emperor Khāravela as he proclaims in his Hathigumpha Inscription (E. I. vol. XX p. 71 at p. 79) and by queen Nayanikā as stated in the Nāpāghāt Inscription (A. S. W. I. vol. V. p. 60).

52. 'Perpetual studenthood' (n. 1798). Vedic students were of two kinds, *upakṣarāṇa* (who offered some return or fee at the time when they returned home) and the *naṣṭhika* (who remained students till death). Vide p. 764 n. 1471 above.

1876. वैष्णवीयपोदुवमाय इष्यन्त्योऽप्यस्तिनारोऽप्योत्तरनारायणेनादित्यमुपवापा-  
रमपतिष्ठ । इमं वा विधिं वैष्णवीयया वक्षते । आष. श्री. XX. 24. 16-17.

1877. तस्मिन् ब्रह्मणो गोभतेधेन यजते । तै. सं. V. 3. 12. 2.

Hārta, Dakṣa<sup>1873</sup> (I. 7) and others mention these two varieties, while Yāj. I. 49, Vādavyāsa I. 41 and Viṣṇu Dh. S. 28. 46 name and describe the *naiṣṭhika*. Manus II. 243-244, Yāj. I. 49-50, Vas. VII. 4-5 provide that a perpetual Vedic student should stay with his teacher till his own death, that on the teacher's death he should stay with the teacher's son or the teacher's wife or should tend fire, that if he curbs his senses till his death, he reaches the world of *brahman* (immortality) and is not born again. This was a very difficult mode of life, there were great temptations as the flesh is weak and therefore the Brāhman-Nāradya and others prohibited perpetual studenthood. Some works such as the Madanapārijāta (p. 16), the Kālicāryyavinirpaya of Dāmodara, and the Nir. S. read 'dirgha-kālam brahmacāryam' in place of 'naiṣṭhikam brahmacāryam' in the Brāhman-Nāradya.

53. 'Brahmacārya for long periods' (n. 1799). The Baud. Dh. S. (I. 2.1-5) declares, "the term of studentship for Veda study as observed in ancient times lasted for 48 years, or 24 years, or 12 years for each Veda or at least one year for each *kāṇḍa* (of the Tai. S.) or it lasted till the Veda was committed to memory, as life is evanescent and as the Veda ordains 'let him kindle the sacred fires while his hair is still black'." The Āp. Dh. S. (I. 1.2. 11-16) provides that the student's stay with the teacher's household should be 48 years, 24 years or 12 years at the lowest. Manus III. 1 also states that the vow of studying the three Vedas under a *guru* must be observed for 36 years or for half of that time or for a quarter of it or until the student has mastered (the Veda). These long periods of 48 years, 36 or 24 years for Veda study (before a man could become an householder) are here forbidden in Kālī. This was nothing new. Yāj. I. 36 had allowed 12 years for each Veda or five and if a man did not want to study all vedas but only one he could finish his studenthood in five years. Only an extremely small number could have spent 48 or 36 years in Veda study. Sabara on Jai. I. 3. 3 held that this text of Baud. was opposed to the *śruti* about kindling fires when a man was a young householder with black hair and was to be discarded. Vide pp. 832-834 above for a

1873. द्वितीयो ब्रह्मचारी उपकुर्वन्तो नैष्ठिकम् । ततोऽप्यकुर्वन्तो स्थावराः । विद्वो  
येऽप्येता अरोरन्विताश्च दुराचारीतः । इति च q. by अपरार्ज p. 71: द्वितीयो ब्रह्मचारी  
स्थावराणां उपकुर्वन्तः । द्वितीयो नैष्ठिकश्च तन्निर्वाण इति विवक्षितः न इह I. 7. 11. by  
स्मृतिच I. p. 67.



discussion of this. The authors of the Samayamayākha and the Sm. Kau. both of whom had before them the reading 'dirghakālam brahmacaryam' held that this prohibition was aimed at the words of Ap. and Baud. and that the vow of perpetual studentship which was undertaken with a special purpose in view (viz. realization of *brahma* and non-return to *saṃsāra*) was not prohibited by the Kalivarīya text and that there was nothing wrong in the practice of perpetual studentship among the Dravīdas.

54. 'Animal sacrifice.' In the Mārkaṇḍeya as quoted in Aparārka p. 929 above animal sacrifice was forbidden in the Kali age. Though popular feeling had gradually veered round to the view that meat should not be offered in śrāddhas, in madhuparka (No. 22 above), yet animal sacrifices were performed at all times and are even now performed, though very rarely.

55. 'Intoxicating drinks (*madya*)'. There were startling vicissitudes in the attitude to intoxicants.

In Vedic times *soma* was a beverage drunk by the priests and *surā* was a beverage for common men and usually not meant to be offered to the gods. Soma and *surā* are sharply distinguished (vide Tai. S. II. 5. 1. 1, Vaj. S. 19. 7, Śat. Br. V. 1. 5. 28). The Śat. Br. (V. 1. 5. 28) has the striking antithesis 'For, Soma is truth, prosperity, light; and *surā* is untruth, misery, darkness'. In the Sautrāmāṇī <sup>1879</sup> a *brahmana* had to be hired for drinking the dregs of *surā* offered in it and if a *brāhmaṇa* could not be found the *surā* was poured on an ant-hill (Tai. Br. I. 8. 6 and Śabara on Jal. III. 5. 14-15). It appears from the Kāthaka-saṃhitā XII. 13 that <sup>1880</sup> *brāhmaṇas* had by that time come to regard the drinking of *surā* as sinful. From Chān. Up. V. 10.9 it appears that a drinker of *surā* was enumerated among five grave sinners. In the Āśv. gr. II. 5. 3-5 it is said that in the rites of the Anvṣṭakā day when *piṇḍas* are offered to the male ancestors, the female ancestors viz. the mother, the paternal grandmother and great-grandmother are offered *surā* and the acum of boiled rice in addition <sup>1880</sup>. The Nir. S. (III.

1879. सत्तमाद् वाङ्मनः सुरां न पिबति पाप्मना केसंस्तुत्या इति । काठकसं. XII. 12, quoted by the उपनिषत्सिद्धि on जै. I. 3. 7 p. 210 and by सङ्कटाचार्य on वेदान्तसूत्र III. 4. 31.

1880. पिण्डपितृयज्ञकल्पेन । इत्या मधुमन्त्रात् पिबन्ती दद्यात् । अथिगन्ध सुरानाचा-मनोपयिक्तम् । भाष्य. सु. II. 5. 3-5.

p. 367) refers to this passage of the Āsv. Gr. and holds that the Kāṭhacarjya text against intoxicants forbids this also.

*Madya* is a generic term applicable to all intoxicating drinks; *surā* is said to be of three kinds, viz. that prepared from molasses, that from honey (or madhūka flowers or from grapes) and that from corn flour (Manu XI. 94, Viṣṇu Dh. S. 22. 82 and Śaṅkara 117). The Viṣṇu Dh. S. (22. 83-84) specifies ten kinds of *madya*, all of which a brāhmaṇa was not even to touch. Gaut. II. 25<sup>1881</sup>, Āp. Dh. S. I. 5. 17, 21, Manu XI. 95 forbid all kinds of *madya* to brāhmaṇas at all stages of life. Āp. I. 7. 21. 8, Vas. I. 20, Manu XI. 54, Viṣṇu Dh. S. 35. 1 hold that the drinking of *surā* is one of the five grave sins (mahāpātakas), while Yaj. III. 227 employs the word '*madya*' in place of *surā* in this connection. Baud. Dh. S. I. 1. 22 however notes that among the five practices peculiar to the brāhmaṇas of the north was that of drinking rum and Baud. condemns it. The verses of Manu XI. 93-94 about the three kinds of *surā* have been the subject of frequent and varying interpretations. Viśvarūpa on Yaj. III. 222, the Mīl. on Yaj. III. 253, Aparārka p. 1069 and others establish that the word '*surā*' primarily applies to *paistī* (liquor prepared from flour) alone, that *paistī* is forbidden to all brāhmaṇas, kṣatriyas and vaiśyas, that it is the drinking of *paistī* alone that constitutes a mahāpātaka, that all intoxicating drinks are forbidden to brāhmaṇas in all ages, but intoxicants other than *paistī* (such as those prepared from molasses or madhūka flowers) are not forbidden to kṣatriyas and vaiśyas. Manu XI. 93 says that *surā* is the refuse of cooked food (rice); therefore members of the three higher castes should not drink *surā*. This clearly shows that Manu took *surā* as meaning only *paistī* (liquor prepared from rice flour). The Viṣṇu Dh. S. (22. 84) expressly says that kṣatriyas and vaiśyas are not polluted by touching the ten kinds of *madyas* specified by it. In the Udyogaparva (59. 5) both Vāsudeva (Kṛṣṇa) and Arjuna are described as intoxicated by drinking the liquor prepared from honey and the Tantravārtika establishes that there was nothing wrong in this as both were kṣatriyas. Intoxicants were not forbidden to śūdras. Brahmachārins of whatever varṇa had to abstain from intoxicants of all kinds. Aparārka<sup>1882</sup> (p. 63)

1881. सर्वं निर्व्वं जाह्नवः । मी. II. 25 ; सर्वं मद्यमपेक्षम् । आप. II. 5. 17, 21.

1882. सर्वं निर्व्वं जाह्नवः ; निर्व्वमिति वचनान्नस्य कुतश्चिन्नाद्यस्य जाह्नवेन कर्त्तव्यमिति शङ्कायां तु कलसत्वं । नद् जाह्नपुराणं ... नराचनेषु सर्वं न कलसं कर्त्तव्यं द्विजातेभिः । अथर्व्ववेद p. 63.



after quoting the *Brahmaparāṇa* states that intoxicating drinks were forbidden to the three varnas in Kali and to brāhmanas in all yugas (ages). But this is opposed to tradition. The *Ādiparva* (chap. 76) narrates<sup>1833</sup> that Śukracārya prohibited for the first time brāhmanas from drinking intoxicants (vide H. Dh. vol. II. pp. 792-799 for detailed discussion of this topic). The *Kalivarjya* text forbids the drinking of intoxicants to all the three twice-born classes. But kṣatriyas and vaiśyas pay scant attention to this prohibition and even some brāhmanas in these days have taken to drink as a fashionable indulgence. The K. V. N. (folio 5a), Kṛṣṇabhaṭṭa<sup>1834</sup> and Śm. Kau. note that in the śakta treatises (called *Vāmāgama*) madya is allowed to be offered to the idol for all the three varnas and to kṣatriyas in the propitiatory rites for Vināyaka and for birth on the Mūla constellation but this *kalivarjya* text forbids all that.

An analysis of these 55 *kalivarjyas* yields very interesting results. About one-fourth out of the above 55 relate to Śrauta matters. There are several texts forbidding Agnihotra, Āśvamedha, Rājāsūya, Puruṣamedha, sattras, Gosava, animal sacrifices, while a few others are concerned with matters of detail in sacrifices (vide No. 11, 14-16, 29-30, 38, 48-51, 54). The first nine of these 55 are concerned with legal matters and relations. Some prohibitions are due to growing caste exclusiveness (No. 5, 10, 31, 40, 43). Others again spring from ideas of greater insistence on the sacredness of the marriage tie, a stricter morality and a demand for greater decency and purity, particularly in women (No. 2, 3, 4, 9, 15, 23, 24, 33, 39, 55). A few are based on notions of compassion, justice and equity (No. 1, 8, 24, 25, 42). Some owe their origin to the growing sacredness of the brāhmaṇa's person and his high social position (No. 7, 10, 27, 29, 30). Some must have been suggested by hygienic considerations (No. 12, 16, 28, 38, 41, 45), some arose from strict ideas of sin, expiation and ceremonial purity and impurity (No. 13, 18-21, 28, 44). Two of these, when they

1833. यो ब्राह्मणोऽप्यमृतीह कश्चिन्मोहात्सुरं पादयति सन्धुञ्जतिः । ज्येष्ठधर्मा ब्राह्मणं चैव न म्यादतिमैत्र्येणैव हि कः स्वापरे च । आश्विन 76. 67 = ब्रह्मवपुराण 23. 62.

1834. यथा वामागमादौ वैष्णविकपुरस्कारेणोक्तं देवनेय्यादौ मद्यविधानं तद्विदुः विविच्यते । अथवा विष्णुपञ्चरात्रे मद्यविधानं न — तुम्ह (तुम्ह ?) विष्णुं सुमन्त्रं च सूरं च विविच्यमानः । यथा-सुरापोतकनोमायैनेषैर्मोसमादिभिः-इत्येताम्भ्यां वचनार्थं यथा तत्र यदापि-मद्यमंनसुरादीनि ब्राह्मणं (ब्राह्मणो!) विनिवर्जयेद्विच्यतेन ब्राह्मणानां विविदिषं तथापि शक्तिवादपुरस्कारेणैव कलौ निषिद्धं इति । कलिकर्णसि, (folio 5a). कुम्भभट्ट p. 129 gives a summary of this.

prohibit the stage of forest hermit and of sannyāsa, strike at the very root of the ancient scheme of āśramas.

The chapter on Kālivariyas can be employed as a very effective answer to those who trot out the theory of the 'unchanging East'. Social ideas and practices undergo substantial changes even in the most static societies. Many of the practices, that had the authority of the Veda (which was supposed to be self-existent and eternal) and of such ancient smṛtis as those of Ap., Manu and Yaj., had either come to be given up or had become obnoxious to popular sentiment. This fiction of great men meeting together and laying down conventions for the Kālī age was the method that was hit upon to admit changes in religious practices and ideas of morality. The Kālivariya texts are also a complete answer to those who held fast to the notion that dharma (particularly *ācārādharma*) is immutable and unchangeable (*aparivartaniya*). This chapter on Kālivariya unmistakably shows how the most authoritative dicta of the Veda and of ancient sages and law-givers were set aside and held to be of no binding authority because they ran counter to prevailing notions and furnish a powerful weapon in the hands of those who want to introduce reforms in the incidents of marriage, inheritance and other matters touching modern Hindu society. One can further see how some practices still persist in spite of the prohibitions in the Kālivariya texts viz. marriage with one's maternal uncle's daughter, sannyāsa, agnihotra and even śrauta animal sacrifices (rarely).

Some works add two more to the Kālivariya verses which mean, 'imprecations, omens, dreams, palmistry, listening for supernatural voices or messages, promises to make presents to a deity if a certain prayer were granted, prophetic replies by astrologers to questions, may rarely turn out to be true. One should not, however, resort to these through the desire to secure results from them. Similarly there are other actions also (that have to be abandoned) in the Kālī age, because they have come to be included (by people) under improper acts (adharmas).'<sup>1885</sup>

1885. अथ शपथः काशीस्थलोलाकंतीर्षमनाद्ययः । शकुनाः पूर्णकुम्भादयः । स्वराः पुरवं कुण्डं कुण्डादुक्तं पश्यति स पुन हन्तीत्यादिबुद्धिसूक्तिसिद्धयः । उपश्रुतिः सरस्वती निर्जे-  
नकादिपुरं शत्रुपक्षपूर्वकं स्वेष्टादिस्वकृतकर्मशब्दाकर्णनम् । उपश्रुतिमन्त्रिण्यु काये  
सिद्धिं भेषाद्य मूर्तं कृत्वा च वास्वानीनादिसङ्ख्याः । अद्वेषः सञ्जलेन उपोत्तिर्निर्जले-  
विष्णुतन्मयम् । पातश्रुतिस्वर्गादिद्वयः सतिवर्गकामुद्वेगापामागम्याः संवादोत्तमनिगमनापामाग-  
मशकुनादिलाभमाधेयं ज्वराम्बुदेशकनिकाद्यादिभूतिसिद्धिर्नैति दृष्टावकाशेनिर्देश एव क्रियते

(Continued on the next page)



From the fact that no ancient *smṛti* speaks of Kalivarjya, that the ancient commentaries of Viāvarūpa, Mōdhātīthi and even Vijñāneśvara do not cite long lists of Kalivarjyas, that such lists first make their appearance in the *Smṛtyarthasāra*, the *Sm. A* and *Hemādri* (works and authors of 12th and 13th centuries), the most probable inference is that these lists of Kalivarjyas were first put together at the earliest in the 10th or 11th century A. D. <sup>1886</sup>

(Continued from the last page)

न तदुद्धारयन् दातव्यमेषः । स्मृतिकौ. p. 477. The passage 'युद्धं कुण्ठे ... दग्धि' is quoted by *सकुण्ठाचार्ये* on वेदान्तसूत्र III. 2.4. The *कलिवर्जवि.* (folio 11b) explains 'सकुण्ठाः काककपोतादिचेष्टाविशेषाः । ... उपबृविश्वैलपावादिपृथुपाशै र्मिताव विनिताव-  
भूचनज्ञानाकर्षणम् । ... आदेशः आशीर्वादः पक्षभलेन भविष्यकथने स ... एते च निषेधा  
द्वयि वाविकास्तुसारिणः । निषण्णास्तुसारिणस्तु (निषण्णान्तु- ?) धर्मविज्ञापनेन पदद्वयसा-  
दयेति मन्थने ।' *वार्तिक* means here the *तन्त्रवार्तिक* of कुमारिल and *निषण्ण* refers to the work of Prabhākara, who was called *निषण्णकार* by the *ज्ञानसूरीपिका* on जे. II, I, 1.

1886. An attempt at a systematical collection of the Kalivarjya texts and elucidation thereof was made by me in a paper submitted to the 8th All India Oriental Conference held at Mysore in December 1933. The paper was published in the Journal of the Bombay Branch of the Royal Asiatic Society, vol. 12 pp. 1-18 (New Series), 1936. Recently (1943) Mr. Batakrishna Bhattacharya has published a book which contains a full treatment of Kalivarjyas. He states in the preface that it is 'an exact reprint of the thesis for Jogendrachandra Ghose Research Prize in Comparative Indian Law for 1933', that the subject is 'comparatively fresh and unexplored' and that the treatment is on lines marked out by the writer himself. He claims that his work is 'original as a whole except one section on secondary sons'. He does not state exactly in what year the thesis for a prize of 1933 was submitted to the Calcutta University. Presumably a thesis for a prize of 1933 should have been submitted in 1934 or 1935 at the latest. No satisfactory explanation is given why the thesis was published in 1943, so long after the year of the prize, nor does he mention my paper published so far back as 1936. It appears from quotations in the book as printed that it was probably retouched, if not actually written, after 1937. For example, on p. 76 he quotes a passage from the *Smṛtimuktāphala* (section on *Vargāśrama* p. 201), which was published by Principal J. R. Gharpure only in 1937 in Devanāgarī. If the original thesis was written or revised in or after 1937 my paper published in 1936 should have been mentioned. Mr. Batakrishna Bhattacharya in his paper 'the sources of dharma and their comparative authority' published in the Proceedings of the 10th Oriental Conference at Tirupattī held in 1940 refers to my paper on Kalivarjyas (p. 160) as 'brief and compact'. This shows that he knew my paper years before he published his work in 1943. The claim of the subject being 'unexplored' and the thesis being 'original' is hardly admissible.

## CHAPTER XXXV

### CUSTOMS IN MODERN INDIAN LAW

Though an elaborate treatment of customs in modern Anglo-Indian Law is far beyond the scope of the present work, yet a few words on customs in modern times may not be altogether out of place here. When the British began to acquire political domination in India they realized the importance attached to customs by all persons in India and the Charter of the Mayor's court at Bombay in 1753, unconsciously following the ancient dicta of Manu ( VII. 203 ) and Yāj ( I. 343 ), contains the earliest trace in British royal charters of a reservation to the peoples of India of their laws and customs.<sup>1857</sup> The British Parliament and the Indian Legislatures have allowed customs to occupy a very high place in the administration of law and justice. The preamble to 21 Geo. III chap. 70 ( 1781 A. D. ) recited that one of the purposes for which the Act was passed was that the inhabitants of Bengal, Bihar and Orissa should be maintained and protected in the enjoyment of all their laws, *usages*, rights and privileges and sec. 17 of that Act provided among other things that, in the case of the inhabitants of Calcutta, their inheritance and succession to lands, rents and goods and all matters of contract and dealing between party and party shall be determined in the case of Mahomedans by the laws and usages of Mahomedans and in the case of Gentus by the laws and usages of Gentus<sup>1858</sup> and, where only one of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant. 37 Geo. III chap. 142 ( 1796 A. D. ), sec. 13, Bombay Regulation IV of 1827, sec. 26, the Government of India Act of 1915 ( 5 and 6 Geo. V chap. 61, sec. 112 ), Government of India Act 1935 ( 25 Geo. V chap. 2, sec. 223 ), the

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1857. *Vida Lopes v. Lopes* 5 Bom. H. C. R. ( O. C. J. ) 172, 183.

1858. The word 'Gentu' ( or Gentoo ) was the Portuguese word for 'Gentile' and appears to mean a pagan inhabitant of Hindustan who is not a Mahomedan. Its use in a judicial document first occurs in the judgment of Lord Chief Justice Willes in *Omichand v. Barker* ( Dufford's Reports of cases, 1737-1769, p. 338 ). Vide on the word Gentoo 'Khojas and Memons case' in Perry's Oriental cases 110, 123 and *Lopes v. Lopes* 5 Bom. H. C. R. ( O. C. J. ) 172, 183-186.



Madras Civil Courts Act (III of 1873, sec. 16), the Bengal, North-west Provinces and Assam Civil Courts Act (XII of 1887 sec. 37), Central Provinces Laws Act (XX of 1875, sec. 5), the Oudh Laws Act (XVIII of 1876, sec. 3), the Bengal Laws Act (XVI of 1872, sec. 5) enact that the custom of the parties or of the defendant shall be the rule of decision in matters of succession and inheritance, marriage, caste, religious institutions and the like.

The burden of proving a custom opposed to the general law or in derogation of the ordinary rights of another lies heavily on the person alleging it.<sup>1889</sup> The decided cases lay down several essentials of a valid custom. In order to make a particular custom valid it must be proved to be immemorial or ancient, uniform, certain, reasonable, obligatory and it must not be immoral or opposed to public policy or to any express enactment of the Legislature. What antiquity must be proved before a custom can be accepted as valid depends upon the circumstances of each case.<sup>1890</sup> When it is said that a custom must be ancient it is not meant that the antiquity must be carried back to a period beyond the memory of man. According to the Mit. on Yāj. II. 27. *amūrta-kāla* (time within living memory) in relation to possession means a period of one hundred years, while according to Katyāyana and Vyāsa it is only a period of sixty years.<sup>1891</sup> On evidence of the prevalence of a custom even for 20, 30, 80 or 90 years the Courts have held that a presumption may arise that the custom is ancient and that if the presumption is not rebutted the Court may accept it as a valid and ancient custom.<sup>1892</sup> Many instances have generally to be adduced for proof of a custom. No hard and fast rule can be laid down about the number of instances required to prove a

1889. *Necikisto Deb v. Bear Chunder* 12 Moo. I. A. 521, 542; *Shiba Prasad v. Prayagkumari* 59 I. A. 331, 345; *Baba Narayan v. Sabooza* 46 Bom. L. R. 312 (P. C.), 314.

1890. *Subhani v. Nawab* 68 I. A. 1, followed in *Panchanon Roy v. Fazlur Rahman* 76 C. L. J. 479.

1891. सुखा पैतमही भुक्तिः पैतुकी जातिः संज्ञता । त्रिभिर्लेखेन लिख्यता स्थिरा वक्ष्यता स्थिती मता ॥ कात्याय. q. by अयराज p. 636; बर्हण्डि लिखति भुक्ता स्वमित्राणां पालका मती । भुक्तिः सा पौर्वी सुमेदिन्या तु द्विपौर्वी । त्रिपौर्वी च त्रिमुखा न हतोन्मेष्य अवमता ॥ व्यास q. by स्मृतिच. II. p. 75.

1892. *Mohamaya Debi v. Haridas* 42 Cal. 455, 472; *Gururudhwanja v. Sagarandhwanja* 27 I. A. 138; *Sasani v. Brigray* 62 I. A. 180, 193; *Parshottam v. Venichand* 45 Bom. 754, 767.

custom.<sup>1892</sup> In certain cases it has been held that specific instances are not absolutely necessary, but the opinions of persons likely to know the existence of the custom is entitled to great weight, even though they may not be able to cite specific instances.<sup>1893a</sup> Customs once prevalent, particularly family customs, may come to be discontinued on account of accident, *change* in popular sentiment or by the concurrent will of all the members concerned.<sup>1894</sup> Customs must be strictly construed and cannot be extended by analogy or parity of reasoning. Because in a particular caste marriage with a maternal uncle's daughter is allowed by custom it does not follow that marriage with a maternal aunt's or paternal aunt's daughter will necessarily be valid. *Vide* H. of Dh. vol. II p. 467 notes 1895-6. The evidence about a custom should be such as to prove the uniformity and continuity of the usage, the conviction of those following it that they were acting in accordance with law and the consciousness of obligatoriness and the custom should not spring from mere habit, imitation and ignorance or mutual arrangement.<sup>1895</sup> A custom must not be unreasonable. A custom of excluding daughters from inheritance was held to be not unreasonable according to the ideas of the Hindu community.<sup>1896</sup> A custom that only members of certain castes (and not of others) were entitled to make use of a temple and to worship therein was held not unreasonable in India, though it may appear obnoxious to cultured people at the present day.<sup>1897</sup>

Customs must not be immoral. Whether a custom is immoral is to be judged by the sense of the whole community.<sup>1898</sup>

1892. *Vide* *Rutilal v. Motilal* 27 Bom. L. R. 880; *Chandika v. Muna* 29 I. A. 70.

1893a. *Vide* *Ahmed Khan v. Channi Bibi* 32 I. A. 372; *S. K. Wodeyar v. Ganapati* 37 Bom. L. R. 584; *Ajai Verma v. Vijai Kumari* 41 Bom. L. R. 700 (P. C.); *Madhav Rao v. Raghavendrarao* 48 Bom. L. R. 196.

1894. *Vannia Kona v. Vannichi* 51 Mad. 1 (F. B.); *Rajkishan Singh v. Ramjoy* 1 Cal. 186, 195-96.

1895. *Mathura v. Eru* 4 Bom. 343, 557; *Gopalayyan v. Raghupattayyan* 7 Mad. H. C. R. 250 (F. B.), 254; *Ram Rao v. Yesheantrao* 10 Bom. 327.

1896. *Bhan v. Sundrabai* 11 Bom. H. C. R. 249, 277.

1897. *Anand Rao v. Shankar* 7 Bom. 323; *Santaralinga v. Rajeshwar* 31 Mad. 236 (P. C.); *S. K. Wodeyar v. Ganapati* 37 Bom. L. R. 584; but *vide* *Narhari v. Bhinurao* 39 Bom. L. R. 1295 (about a tank).

1898. *Deivanayaga v. Nuthu* 44 Mad. 329, 333.



A custom which authorizes a woman of the lower castes to contract a second marriage without divorce on payment of a certain sum to the caste was held to be immoral<sup>1899</sup> and the Bombay High Court refused to recognize the authority of the caste to declare a marriage void or to give a woman permission to remarry without a release from the husband.<sup>1900</sup> The adoption of girls by dancing girls (*nauts*) has not been recognized by the Bombay High Court,<sup>1901</sup> though the Madras High Court would recognize such an adoption if there was no intention to make it for purposes of prostitution.<sup>1902</sup> Dagger marriages are practised among certain castes. The Brahmapurāṇa (chap. III, 15 and 44-46) states that among ksatriyas there are several forms of marriage such as forcibly carrying away the bride (which is the form called *rākṣasa*) or marriage with the weapons (of the bridegroom). In modern times dagger or sword marriages have not been held valid by the courts even among śūdras; vide *Maharaja of Kolhapur v. Sundaram* 48 Mad. 1, *Ram Sarin v. Mahabir* 61 I. A. 106.

Many customs and usages have been expressly forbidden by the Central Indian or Provincial Legislatures e. g. *Sati*<sup>1903</sup>, female infanticide,<sup>1904</sup> slavery,<sup>1905</sup> marriages of children under a certain age,<sup>1906</sup> the dedication of women as *devadāsīs* to temples or idols.<sup>1907</sup> This being so, no court will allow a party to plead a custom against these positive enactments. It was recognised in a number of cases that in the Bombay Presidency<sup>1908</sup> a *vatandar joshi* had the right to recover by suit from

1899. *Reg. v. Kuran* 2 Bom. H. C. R. 117, 123; *Uji v. Hathi* 7 Bom. H. C. R. (A. C. J.) 133.

1900. *Keshav v. Bal Gaud* 39 Bom. 338, 343.

1901. *Mathura v. Han* 4 Bom. 343; *Hira v. Radha* 37 Bom. 116; *Girimalappa v. Keshava* 45 Bom. 768, 784-2; *Ghasiti Umrao v. Umrao* Jan 20 I. A. 193.

1902. *Venku v. Mahalinga* 11 Mad. 393; *Kamalakshi v. Ramasami* 19 Mad. 127; *Duggirala Veeranna v. Duggirala Sarasiratnam* 71 M. L. J. 53; *Gangamma v. Cuddappa Kuppanmai* I. L. R. (1935) Mad. 789.

1903. Vide Regulation XVII of 1829 and sec. 306 of I. P. C.

1904. Vide the Female Infanticide Prevention Act (VIII of 1870).

1905. Vide Act V of 1843 and sections 370 and 371 of I. P. C.

1906. The Child Marriage Restraint Act (XIX of 1929 as amended by Act XIX of 1938).

1907. Bombay Act X of 1934, sections 3-5.

1908. Vide *Vithal v. Anant* 11 Bom. H. C. R. 6; *Dinanath v. Sudashiva* 3 Bom. 2; *Raja v. Krishnabhat* 3 Bom. 232, *Waman v. Balaji* 14 Bom. 167.

a *yajaman* who had employed another priest to perform religious ceremonies the amount of the fees which would properly be payable to the *vatandar joshi* if he had been employed to perform such ceremonies and also the right to recover damages from a person who intrudes upon his office. But Bombay Act XI of 1926 (the Invalidation of Hindu Ceremonial Emoluments Act) now enacts (by sec. 4) that no person shall be entitled to claim as a matter of right any ceremonial emoluments from any Hindu who does not call in the services of the person claiming those emoluments. Therefore, suits of the nature described above cannot be brought now in Bombay by a *vatandar joshi*.

How customs and practices once prevalent may come to be discontinued or abrogated is well illustrated in the section on *Kalivarjyas*. Some of those that have a legal bearing have been already discussed above.

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## APPENDIX

### NOTE 191

Long lists of high functionaries and other officers occur in several inscriptions. Vide E. I. vol. VII at p. 91 (Kahla plate of Sodhadava), E. I. vol. XII at p. 40, E. I. vol. XIV at p. 327 (grant of Mahipala). There are about 40 titles in some inscriptions. They are generally arranged in order of dignity and importance, the highest coming first. Sometimes several offices are held by the same man. For example, in the Jesar plate of Śīlāditya (dated in Valabhi year 357) the high officer Mammaka is styled 'sandhivigrahādhikṛta, divirapati, mahapratihāra, sāmanta' (E. I. XXII at p. 120). It is not claimed that the following is a thoroughly exhaustive list. It is, however, exhaustive enough. Titles and dignitaries in South Indian languages have been generally omitted. Vogel stands for Dr. Vogel's work on 'Antiquities of Chamba State' where, on pp. 120-136, he furnishes informing notes on some officers. There is difference of opinion among scholars about the exact meaning of certain office names. The individual functions of several officers are not quite clear. The references given here as to where an office occurs are not exhaustive. Chronologically older references alone are generally given and they are mostly taken (so far as inscriptions are concerned) from the *Epigraphia Indica* (E. I.) and the *Indian Antiquary* (I. A.). Many official titles have the word 'mahā' prefixed without any change in meaning in some cases. Vide India Office Plate of Lakṣmaṇasena in his 27th year (E. I. XXVI p. 1 at p. 7) for many official titles beginning with 'mahā'.

अक्षपत्रिक—Vide Mahākṣapāṭalika below. 'Akṣapātala' means 'Account office' (Steln) or 'Record office' (Fleet). There is 'grāmākṣapāṭalika' mentioned in the *Harṣacarita* (VII, para 2). Vide Chandela plate dated *samvat* 1108 (E. I. XX at p. 128) and Candrāvati plate of Candradeva dated *samvat* 1148 (E. I. IX at p. 305). Kautilya has a section on the superintendent of 'akṣapātala' (II. 7).

अक्षपत्रव्यधिकृत—This is synonymous with 'akṣapāṭalika'. This word occurs in Gupta Ins. No. 60 p. 257 and in *Rājatarah-giṇī* V. 301, 397-398.



अक्षपटलपथक्ष—Superintendent of records and accounts. Vide Kautīlya II. 7 and p. 143 above for his duties.

अक्षशालिक or अक्षशालिन्—Officer in charge of the gambling-hall. Vide Komanda plate of Nettiabhañja in E. I. XXIV p. 172 at p. 173 ( about 4th century A. D. ).

अक्षपात्र—Superintendent of gambling. He was one of the ' *rutins* ' mentioned in the Tal. S. and Śat Br. Vide H. of Dh. vol. II p. 1216 and above p. 112.

अद्वपति—' Market-master '. Vide Rājat. V. 167.

अधिकरणलेखक—Official recorder or scribe ( who drew up deeds of sale and the like after having the land sold measured in his presence ). Vide Rājat. VI. 38 and note 436 above where Visṇu Dh. S. VII. 3 is quoted.

अन्तर्पाल—Officer in charge of boundaries. Vide Kautīlya I. 12 ( one of the 18 *tirthas* ), II. 21, V. 1. and Kāmandaka XII. 5. The word occurs in the Mālavikāgnimitra, Act I.

अन्तर्पुरमहामात्र—Officer in charge of the inner apartments or of the harem. Vide Masulipatam plate of Ammarāja II in E. I. XXIV p. 268 at p. 276.

अन्तर्पुरिक—Officer in charge of the king's inner apartments or harem of the king. Vide Candrāvati plate of Candradeva of Kanoj ( in *samant* 1148 ) in E. I. IX. at p. 305.

अन्तरङ्ग—A class of royal servants very intimate with the king ( probably same as *ābhyanantara* ). Vide Parikud plate of Madhyamarājadeva of Śailadanta family in E. I. XI at p. 286 and grant of Lakṣmanasena in E. I. XII p. 91 ( of 1122 A. D. ).

अन्तर्वेशिक—Officer in charge of the inner apartments or harem. Kautīlya I. 12 mentions this officer among the 18 *tirthas*. The word occurs in the Kādambari ( para 88 ), the Daśakumāracarita III. p. 71 and is defined by the Amarakośa.

अभित्वरमायक—A messenger. The word occurs in the Nālanda plate of Devapāladeva in E. I. XVII at p. 321 ( the words are ' *dātapraisāṅka-gamāgamika-abhitvaramāyaka* ' ) and in the Khallimpur plate of Dharmapāla ( E. I. vol. IV p. 243 at p. 250 ). Vide also Chamba Ins. No. 15 p. 166 for the same and Vogel ( pp. 125-126 ).

अमच—( Prākṛit for अमान्य ). Vide Nasik Ins. Nos. 4 and 5 in E. I. VIII pp. 71, 73 ).

अमत्य—Minister. Vide p. 104 and note 150 above.

अभयस-कायस्थ—A petty officer in charge of the fodder for horses. Vide *Rājat.* III. 489.

अश्वपति—A cavalry officer. Vide Gupta Ins. No. 61 at p. 259 (in the Gupta year 106).

अक्षयपटलिह—Officer in charge of the account or record office. Vide E. I. vol. I pp. 316, 318 (grant of Karna I dated *samvat* 1148).

आग्रहारिह—Officer in charge of an *agrahāra* or *agrahāra*. Vide Gupta Ins. No. 12 (Bihar stone Ins. of Skandagupta) p. 47 at p. 52 and Mallasarul plate of Vijayasena in E. I. XXIII p. 155 at p. 159. The word may also be 'agrahārīka' or 'agrahārīn'. Vide E. I. XXIV at p. 127 for a note on 'agrahāra'.

आज्ञप्ति—One who communicates at the order of the king the details about a landgrant to local officers (probably the same as *dūtaka*). This word occurs in some of the earliest Ins. of Pallava Śivaskandavarman (in E. I. VI p. 84 at p. 88). Vide also E. I. VIII at p. 146 (plates of the great Pallava queen Cārudevī), JEBBAS vol. X p. 365 of *śake* 532 (where the *ājñapti* is Durgapati), E. I. XII p. 3, E. I. XV p. 70 (plate of Sundara Cola). In the grant of the eastern Chalukya king Amma II we have 'ājñaptiḥ katakādhiśo bhātṭadevasca lekhaḥ' (E. I. VII at p. 188). Vide p. 184 of the same for a discussion of the meaning.

आज्ञा—a synonym of आज्ञप्ति. Vide Parle plate of Indravarman in E. I. XIV p. 360 at p. 362 (of the Ganga year 140) where the words are 'ājñā mahamahattara-Śivavarmā'. When in the Gupta Ins. No. 25 at p. 115 (of Mahārāja Saṅkṣobha) or in the plate of Dropasūtiha in the Vaiabhi year 183 in E. I. XVI at p. 19 the words at the end are 'svayam-ājñā' the meaning is that the king employed no *dūtaka* to convey the details of his grant to the local officers but that he gave the details in person.

आज्ञापक—Probably the same as 'ājñapti' or 'dūtaka'. Vide L. A. 14 p. 161 in the record of Vākpatirāja of Dhārā dated *samvat* 1036.

आदिक—Officer in charge of forest tracts. The word occurs in Kautilya I. 12 among the 18 *ūrthas*.

आधिकारिह—Officer. The exact function cannot be indicated. Vide grant of Dhārāvārsa in *śake* 702 (E. I. XXIV p. 176).



at p. 184 ), Cambay plates of Govinda IV in *śaka* 852 ( E. I. VII p. 26 at p. 40 ), Kantheri plate of Vikramāditya V in *śaka* 930 ( I. A. 16 p. 15 at p. 24 ).

आन्वन्तर—Officers specially intimate or in close contact with the king. Vide *Rajāt*, VIII. 426.

आयुक्त—An officer. The exact duties are not clear. Pāṇini II. 3. 40 indicates that he knows the word in the sense of a servant or officer. Vide Gupta Ins. No. 1 p. 1 at p. 8 ( Allahabad Stone pillar Ins. of Samudragupta ) which has 'ayukta-purusa'.

आयुक्त—Same as आयुक्त. The word occurs in Kāmasūtra V. 5. 5 and Kāmandaka V. 82 ( q. in note 73 above ). Vide Omgudu grant of Vijayaskandavarman ( E. I. XI at p. 250 ), Paharpur plate ( E. I. XX p. 59 at p. 61 in Gupta year 159 ), plate of Dronasimha in Valabhi year 183 ( E. I. XI p. 17 ), grant of Dharasena II in Valabhi year 252 ( in I. A. vol. 15 p. 187 ), the Maltraka plate in Gupta year 252 ( E. I. XI p. 83 ).

आयुक्त—( Prakrit अयुक्त )—occurs in Brahmagiri Rock Inscription of Aśoka ( in Corpus I. I. vol. I p. 175 ).

आचार्य—lit. guardian of quarters. Acc. to Śukra I. 192 he is a chief ruling over 10000 villages.

उपयुक्त—A subordinate officer. Kautliya II. 5 has that word. The duties cannot be specified.

उपयुक्त—Probably the same as 'upayukta'. The word occurs in Karhad plates of Kṛṣṇa III dated *śaka* 880 ( E. I. IV p. 278, at p. 285 ), the Cambay plates of Govinda IV in *śaka* 852 ( in E. I. VII p. 26 at p. 40 ).

उपरिक—A very high officer, somewhat like a Governor of a province. Vide Damodarpur plate of Kumāragupta I in the Gupta year 125 ( i. e. 443-44 A. D. ) where an *uparika* is said to have been selected by Emperor Kumāragupta to govern Puṇḍravardhanaśbukti and where the *uparika* is said to have appointed the kumārāmātya Vetravarman to govern the district ( *visaya* ) of Kotivarṇa ( E. I. XV p. 130 ). He is sometimes styled mahārāja and rājaputra. Vide also Gupta Inscriptions pp. 213, 216, the Bhagalpur plate of Nārāyaṇapāla ( I. A. 15 p. 304 at p. 306 ), the Banakhera plate of Harsa ( E. I. IV p. 208 at p. 211 ) where *uparika* occurs after 'kumārāmātya' and before 'visayapati'. Viśvarūpa on Yāj. I. 307 quotes a prose passage from

Bṛhaspati where the qualities requisite in an *uparika* are set out. Vide Dr. R. G. Bhandarkar *Festschrift* pp. 231-233 for note and Vogel p. 123.

एराज—The exact meaning is not certain: probably an officer belonging to a body organized in military fashion for collecting revenue or performing police duties. The word occurs in *Rājat* V. 249, VII 1604.

कटकेश or कटकराज or कटकाधीश—Superintendent of the royal camp. Vide E. I. VII at p. 185 (grant of Amma II who ruled from 945 to 970 A. D.).

कटुक—Exact function not known. The word occurs in two *Taleśvara* plates in E. I. XIII at p. 117. Vide महाकटुक below.

कम्पनाधिपति or कम्पनापति or कम्पनेश—Commander-in-chief. Vide *Rājat* V. 447, VII 1362 and 1366.

कम्पनीप्रसूदक—An officer connected with the army. Vide *Rājat* VIII 1430.

करण—A clerk. The word occurs in the *Irda* plate of Kamboja king Narapāladeva in E. I. XXII p. 150 at p. 155 (about 10th century A. D.).

करण-कायस्थ—A scribe of legal documents. Occurs in *Chamba* Ins. No. 25 p. 187 at p. 194. Vide Vogel p. 133.

करणिक—Officer in charge of a State department or office. The word occurs in the *Nālanda* stone Ins. of Yaśovarmadeva's reign about 530 A. D. in E. I. XX p. 37 at p. 44, in the *Chatsu* Ins. of Guhilot Balāditya of about the 10th century in E. I. XII p. 10 at p. 17, in a grant dated *samvat* 1203 of Govindacandra's son in E. I. VIII p. 158 (where we have 'karanika-ṭhakkura-śrīvivika'), in E. I. XX Appendix p. 52 No. 350 of *samvat* 1228 (about the donation of a karanika-brāhmana-Chāhāda).

करणिन्—Same as 'karanika'. The word occurs in the *Harsacarita* VII para 2 (*sakula-karani-parikara*).

कर्मसचिव—Executive minister. The word occurs in *Rudradāman's* *Junagadh* Ins. of 150 A. D. in E. I. vol. VIII p. 36. Vide p. 105 above.

कायस्थ—A scribe or writer in the revenue department of the king. The oldest references are probably those in *Yaj.* I 322, *Viṣṇu Dh.* S. VII 3 and *Br. Saṁ.* 86. 12. Vide *Āśvagṛha-*



kāyastha above and grāmakāyastha in Rājat. V. 175 and Indian Historical Quarterly, vol. IX p. 12 (a grant of Gupta year 120 i. e. 439-40 A. D.). Vide H. of Dh. vol. II. pp. 75-77 for a note on Kāyastha.

कर्मोन्निव—Superintendent of all mines and State manufactories. Kautilya I. 12 mentions him among the 18 *śirṭhas*. Kautilya II. 12 is headed 'ākara-karmāntagravartanaṁ' i. e. 'conducting mining operations and manufactories'.

कुमार—A prince younger than a Yuvarāja (the heir apparent). The word 'Kunāla' occurs in the first separate Rock Edict of Aśoka at Dhauli (Corpus I I vol. I pp. 93, 97). Vide also Corpus I I. vol. II pp. 40 and 48 (Mathura Lion Pillar capital).

कुमारमहस्य—A high officer below a provincial Governor. Vide 'uparika' above. In the Allahabad *prakṛti* of Samudragupta, Hariṣeṇa is described as *kumārāmātya* and also *sūndhivigrahika* and *mahādandanāyaka* (Gupta ins. No. I at p. 16). Vide Gupta Ins. No. 46 p. 213 at p. 216, the Banskhera plate of Harsa (E. I. IV p. 208 at p. 211), E. I. X at p. 72 in the reign of Kumāragupta in Gupta year 117 (a brāhmana is described as *mantrin*, *kumārāmātya* and *mahā-balādhikṛta*). Vide Dr. U. N. Ghoshal's paper on 'kumārāmātya' in the proceedings of the 6th All India Oriental Conference pp. 211 ff., p. 117 above and Vogel p. 123.

कुलकरणि—a hereditary clerk or officer. The word occurs in the Sūdi Ins. of *śaka* 981 in E. I. XV p. 85 at p. 91.

कुलिक—An officer in charge of ten villages who was granted a 'kula' of land for his salary. Vide Manu VII. 119 and Kullūka thereon. In the Damodarpur plate of Gupta year 124 it is said that the head of the district was assisted by the *nagara-treṣṭhin*, *prathama-kulika* and *prathama-kāyastha* (E. I. XV at p. 130). In the Nālandā plate of Devapāladēva we read 'Odra-mālava-khaṣa-kulika-karnāṭa-hūna-cāṭa-bhaṭasevakādīn' (E. I. XVII at p. 321). Vide Chamba Ins. No. 15 at p. 166. Vogel says that 'Kulika' is a tribe (pp. 126-127). Probably the passage means 'officers in Orissa, Khaṣa and Mālvā and the cāṭas and soldiers of Karnāṭa and Hūna origin'. Kulika also means 'an arbitrator as a tribunal'. Vide pp. 280-282 above and Indian Historical Quarterly, vol. 19 p. 12 at p. 14. Vide महापादकलि.

**कोटपाल**—Officer in charge of a fort. The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306) and in the Nālandā plate of Devapāladeva in E. I. XVII at p. 321 where the word is read as *koṭapāla*.

**लघु**—Chamberlain. Vide p. 111 above. He is one of the '*ratnins*'. According to Manu X. 16 and Yaj. I. 94 the offspring of a ksatriya woman from a śūdra male was called *kṣātr* and it is probable that such mixed offspring were employed as door-keepers or chamberlains.

**सत्रप**—A provincial chief. The word occurs in Corpus I. I. vol. II p. XXXIV and pp. 23, 28 (Taxila plate of Patika of the year 78) and in the plate of Vidagdha in 'Antiquities of Chamba', Ins. No. 15 p. 164 at p. 166. Vogel says it must be read as '*kṣetrapa*'. Vide '*mahākṣatrapa*' below. The word is probably a Sanskritized form of Persian '*satrap*'.

**क्षेत्रप**—The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at 306).

**क्षेत्रपाल**—Occurs in the Nālandā plate of Devapāladeva (E. I. XVII at p. 321).

**खड्गपाल**—The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), in the Nālandā plate of Devapāladeva (E. I. XVII at p. 321) and in the Chamba Inscription Nos. 15 and 26. In 'Antiquities of Chamba' Ins. No. 25 the form is '*khadgaraksa*'. Vide Vogel pp. 127-128.

**खड्गपाल**—Occurs in the Kahla plate of Sodhadeva of *śrinat* 1134 (E. I. VII p. 85 at p. 91). The form *खड्गपाल* occurs in the Panchobh plate of संवत्सर (JBORS. vol. V p. 582 at p. 588).

**कोल**—Occurs in the Khalimpur plate of Dharmapāladeva (E. I. vol. IV p. 243 at p. 250). The meaning is uncertain.

**गजपति**—Officer in charge of the elephant arm in an army. The word occurs in the plate of Jayacandra of Kanauj dated *śrinat* 1225 in I. A. vol. 15 at p. 7.

**गजपति**—Occurs in the Talesvara plate (6th to 8th centuries A. D.) in E. I. XIII p. 109 at 115. उत्तल on इहसहिता 52, 13 says '*कोषागमनं गजः*'.

**गजवर**—(a Persian word for '*treasurer*')—occurs in the Ins. of Mahākṣatrapa Śodāsa found at Mathurā (in E. I. IX p. 247). Vide Rājat. V. 177.



गमागमिक—The meaning is uncertain. It probably means some kind of messenger. It occurs in Bhagalpur plate of Nārāyaṇapāla (I A. 15 p. 304 at p. 306), the Nālanda plate of Devapāladeva (E. I. XVII at p. 321), the Rajor Ins. of Mathanadeva in *samvat* 1016 (in E. I. vol. III p. 263 at p. 266). डत्तल on बृहत्संहिता 85. 34 explains दूत as गमागमिक. In the Khalimpur plate (E. I. vol. IV pp. 243, 250) the words दूतबोलेगमागमिकासित्वमात्र occur one after another.

गवुड—Same as *grāmakūta* below. Vide Ins. from Hottur in E. I. XVI p. 74 (of śake 929).

गवुडु—Same as above. It occurs in the Ratta Ins. from Saundatti of śake 902 (in JBBRAS. vol. X at p. 208).

गुल्मपति—Officer in charge of a गुल्म, for which see p. 205 above. It occurs in the Panchobb plate of Sangrāmāgupta (12th century) in JBORS. vol. V p. 582 at p. 588.

✓ गृहपुरुष—Secret service men. Vide Iṛda plate of Kambhoja king Narapāladeva in E. I. XXII p. 150 at p. 156 (about 10th century).

✓ गोप—Officer over five or ten villages. Vide Kauṭ. II. 35 and p. 143 above.

✓ गौलिक—'Superintendent of woods and forests' (Fleet). The word occurs in Gupta Ins. No. 12 p. 47 at p. 50, in the Nālanda plate of Devapāla (E. I. XVII at p. 321), Bhagalpur plate of Nārāyaṇapāla (I A. 15 p. 304 at p. 306), in the grant of Lakṣmāṇasena (E. I. XII p. 6 at p. 9). The word is formed from 'gulma' acc. to Vārtika 13. (āyasthanebhyasṭhaka) on Pāṇini IV. 2. 104. Vogel (p. 127) boldly asserts that 'the words saulkika and gaulmika are unknown in Sanskrit Literature' in spite of Bühler's note in E. I. vol. I p. 2 at p. 7 that saulkikas are frequently mentioned in inscriptions. But saulkika also occurs in Yāj. II. 173 and both words occur in the Mahābhāṣya. Gulma means a post of guards. Vide p. 141 above. The word 'gaulmika' read in the grant of Pallava Śivaskandavarman (E. I. vol. I p. 2 at p. 5) is correctly held by Bühler to stand for 'gaulmika'.

ग्रामकायस्थ—Village scribe. Occurs in Rājat. V. 175.

ग्रामकूट—Village headman. Vide p. 154 for reference from Paithinasi. Kauṭ. IV. 4 has that word and the com. on Kāmasūtra V. 5. 5 explains 'halotthavṛtti' as 'grāmakūṭa'. Vide also Karhad plates of Kṛṣṇa III dated śake 880 (E. I.

IV p. 278 at p. 285), the Sanjan plates of Buddha-varasa (E. I. XIV p. 144 at p. 150), the grant of Karka Suvarṇavarasa in śaka 746 (E. I. XXIV p. 77 at p. 84), Cambay plates of Govinda IV in śaka 852 (E. I. VII pp. 26, 39).

ग्रामहटक—Same as above. This form occurs in Kautheri plate of Vikramāditya V dated śaka 930 (I. A. vol. 16 p. 15 at p. 24).

ग्रामणी—Village headman. Vide pp. 153-154 above for ancient references. Pāṇini V, 2. 78 has this word.

ग्रामनेतृ—Same as above. Occurs in Śukra II. 120.

ग्रामपति—Occurs in the Mit. on Yāj. II. 271.

ग्राममर्तु—Occurs in Yāj. II. 271.

ग्रामाधिपति—Vide Kāmasūtra V. 5. 5.

ग्रामिक—Village headman. Occurs in Manu VII. 116, Kaut. III. 10 and in Bhūmāra stone Pillar Ins. of Hastin and Śarvanātha in Gupta year 189 (Gupta Inscription No. 24 p. 112).

चट्टपति—Officer in charge of quays or landing places (*ghats*). Occurs in Kahla plate of Sodhadeva in *śamrat* 1134 (E. I. VII. p. 85 at p. 91). For चट्टपाल vide JBORS vol. V pp. 582, 588.

चोर—This word has given rise to various opinions. Fleet and Bühler translate as 'irregular soldiers'. Vogel (pp. 130-132) points out that Chamba is the only place where the ancient word 'cāṭa' is still extant in the modern form 'chat' meaning 'head of a *pargana*'. Grants of villages are often expressed as 'acāṭabhaṭapraveśya' (not to be entered by cāṭas and bhaṭas). For example, in the Surat plate of Maṭraka Vyāghrasena (E. I. XI at p. 221) it is stated that the granted land was not to be entered by cāṭas and bhaṭas except for (seizing) robbers and those guilty of harm or treason to the king. Similar words occur in the Betul plates of Saṅkṣobha in Gupta year 199 (acāṭabhaṭapraveśyam coradrohakavarjam) in E. I. VIII p. 287. The words occur also in the Khoh plate of Mahārāja Hastin in Gupta year 191 (Gupta Ins. No. 23 p. 106). Yāj. I. 336 states that it is the duty of the king to protect people from the harassment caused by cāṭas, robbers and *kāyasthas* and the Mit. explains 'cāṭa' as persons who deprive people of their wealth after producing false confidence in them. Three quarters of the same verse occur in the Pāṇicantra I p. 72 verse 343. Aparārka (p. 792) quotes Bṛhaspati that 'dangers common to all are those arising from cāṭas and thieves'.



Prof. Pathak while editing the Abbona plates of Śaṅkara-gaṇa dated in Kalacuri *samvat* 347 in E. I. IX p. 296 quotes the words of Śaṅkarācārya (tārkika-cāta-bhaṭarājāpraveśyam) in his Bhāṣya on Br. Up. and Ānandagiri's explanation thereon viz. cātas are those that transgress the rules of conduct for decent people and bhaṭas are servants telling falsehoods. Vide the Valabhi grant of Dharasena II in 252 Gupta year (I. A. 15 p. 187) and the Palitana plates of the same king and of the same year in E. I. XI. p. 80 at p. 83 and the Banskhera plate of Harṣa (E. I. IV p. 208, at p. 211 where we read 'bhaṭacāta-sevakādīn) for other early occurrences of the word. In the Naihati grant of Ballāla-sena we have the words 'cattabhaṭa-jātiyān janapadān' (E. I. XIV p. 156 at p. 160).

✕ चोरपक—Thief-catcher. The word occurs in Nārada (pariśista verse 18) and in Kāt. q. by Aparārka p. 844.

✕ चोररज्जुक—Probably an officer whose duty it was to secure robbers with ropes. Kaut. IV. 13 mentions this officer and II. 6 refers to 'corarajjū' as one constituent of 'rāṣṭra'.

✓ ✕ चोरदणिक—Thief-catcher or one who exterminates thieves. This word occurs in Gupta Ins. No. 46 p. 213 at p. 216, the Valabhi grant of Dharasena II in Gupta year 252 (I. A. 15 p. 187) and the Palitana plate of the same king in the same year (E. I. XI p. 80 at p. 83), the Rāṣṭrakūṭa grant of Śake 697 (JBBRAS vol. 16 p. 105 at p. 108), Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 305), the grant of Lakṣmīnarsena (E. I. XI p. 6 at p. 9).

✓ ✕ चोरदण्ड—Same as above. The word occurs in Yāj. II. 271 and in Kātyāyana quoted by Aparārka p. 844.

छत्रधारिक—Umbrella bearer. This word occurs in 'Antiquities of Chamba', Ins. No. 15 at p. 166. Vide Vogel p. 128.

उपसृष्ट—It appears to have been a mere title and not an office whereby the holder was entitled to wield some kind of power in the State. The word occurs in *samvat* 1005 (E. I. XIX p. 243), in the plate of Govindacandra in *samvat* 1186 (in E. I. XIII p. 295 at p. 297), the Sevadi plate of Cāhamāna Ratnapāla in *samvat* 1176 (E. I. XI p. 304 at p. 310). It occurs as a title in Rājat. VII. 290, 706, 738.

तन्त्राधि—A Judge (dharmādhikārīn). Occurs in Rājat. VIII. 2422.

✓ **तन्त्रपाल**—Seems to mean some officer like "Charged" *affaires*". The word occurs in a record at Sādi in Ron Taluka of Cālukya Someśvara I in śaka 973 (E. I. V at p. 77) and in Partabgarh Ins. of Pratihāra king Mahendrapāla in *samvat* 1003 (in E. I. XIV p. 176 at p. 185), one Mādhava being styled 'tantrapāla-mahāsāmanta-mahādandanāyaka'.

✓ **तरपति**—Superintendent of all ferries. Vide Nālanda plate of Devapāla (E. I. XVII at p. 321) and Kāhla plate of Sodhadēva in *samvat* 1134 (E. I. VII at p. 91). In the Nālanda plate 'tarika' and 'tarapatika' come immediately after one another and must be distinguished as to meaning.

**तरिक**—Probably means 'one who plies a ferry boat'. Occurs in Nālanda plate of Devapāla (E. I. XVII at p. 321), Bhagatpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306).

✓ **तलार** or **तल्लर**—Meaning uncertain. The word occurs in the Ins. of Samarasimha of Mewar in *samvat* 1330 (E. I. vol. XX. Appendix No. 579 p. 82). In Punjab a subdivision of high class *khatris* is called Talwār.

**तलावाटक**—Meaning not apparent. Bhagavanlal suggested that it is the same as modern 'Talāṭi' (petty revenue officer). It occurs in the Deo-Baranark Ins. of Jivitagupta (Gupta Ins. No. 46 p. 213 at p. 216).

✓ **दण्डनाथ**—Commander of an army. In E. I. vol. V. p. 28 at p. 31 mention is made of a Dandanātha Sahadeva under the Yādava king Jaitugi or Jaitapāla (about 1200 A. D.).

✓ **दण्डनायक**—Various meanings are assigned by several scholars. Stein on Rājat. VII. 951 takes it to mean 'prefect of police'. In many cases it appears to mean a 'General or Magistrate'. In E. I. VII, Appendix No. 291, 292 and 296 Ins. of the years 1178 to 1181 A. D. there is one Keśimayya styled 'dandanāyaka' lower in rank than mahāmaudaleśvara. Vide also Ins. of Jayakeśi Kadamba of 1125 A. D. in E. I. XIII p. 298 and p. 317 (Dandanāyaka Lakṣharasa), JBBRAS XII p. 11 in śaka 1145 (Dandanāyaka Puruṣottama of Yādava Singhaṇa), the Abhir Ins. in E. I. V p. 234 where one Mahadevarasa is styled mahāsāmantaādhipati and dandanāyaka and his subordinate Māyideva is also called 'dandanāyaka' (about 1153 A. D.), in several Kalacurya Inscriptions (E. I. V p. 24 at p. 28, E. I. V. p. 213 at p. 215). Lakṣṇa and Madanna were dandanāyakas of Devarāja II of Vijayanagara (about 1388 śaka) in E. I. XV at p. 15. Vide p. 115 and n. 152 above. E. I. XIX p. 265 at p. 269 (grant of



Dharmarāja) reads 'dāḍaṇṣyaka'. In Br. Śaṁ. 72.4 the queen, yuvarāja, senāpati and dāḍaṇṣyaka are placed on the same level in the matter of the staff (danda) to be prepared for them.

✓ **दण्डपति**—Commander of forces or a governor. Vide Abu Vimala temple Ins. dated *śamvat* 1378 in E. I. IX pp. 148, 156.

✓ **दण्डपाल**—An officer in charge of all branches of the army. Vide Kaut. I. 12 and p. 112 n. 147 above.

✓ **दण्डपाशिक**—Officer in charge of punishment i. e. criminal justice. The word occurs in the Palitana plates of Dharasena II dated in Gupta year 252 (E. I. XI p. 83), in the Valabhi grant of the same king in the same year (I. A. 15 p. 187), in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306 which reads 'dāḍapāsika') and Lakṣmaṇasena's grant (E. I. XII at p. 9), also in Yaśastilaka I p. 50.

✓ **दण्डवासिक**—(a prakṛit form of dāḍapāsika). Occurs in Chamba Ins. No. 15 at p. 166. Vide Vogel p. 129.

✓ **दण्डशक्ति**—Meaning uncertain. The word occurs in Khalimpur plate of Dharmapāla in E. I. vol. IV p. 243 at p. 250.

✓ **दण्डाधिनाथ**—Same as dāḍapāla. The word occurs in the Chittur plates of Kullottunga Coḍadeva (I. A. 14 p. 55 in *śake* 1056).

✓ **दण्डाधिप**—Same as above. The word occurs in a quotation in the com. on Yaśastilaka I p. 91 and the Abu Vimala temple Ins. dated *śamvat* 1378 in E. I. IX p. 148 at p. 151. Vide note 148 above for quotation.

✓ **दण्डिक**—Same as 'dāḍavāsika'. Vide Chamba Ins. No. 15 at p. 166.

✓ **दण्डेश**—Same as दण्डनाथ. In J. B. B. R. A. S. vol. 15 p. 386 (of *śake* 1160) there is a commander (dāḍeśa) Bicirāya under Yādava king Singhapa.

✓ **दण्डपाशिक**—Same as 'dāḍapāsika'. This word occurs in the Pāṇcatantra II, *Kaṭha* 4 (as dāḍapāsika meaning a watchman), in the grant of Mahābhavagupta I (E. I. XI at p. 94), in the Nālanda plate of Devapāla (E. I. XVII at p. 321), in E. I. XIX p. 265 at p. 269. Vide Vogel p. 129.

✓ **दण्डभोगिक**—Probably the same as दण्डपाशिक. The word occurs in the Wala plate of Guhasena in Valabhi year 246 (E. I. XIII at p. 339).

✓ **राष्ट्रिक**—A police officer. The word occurs in the Gupta Ins. No. 46 p. 213 at p. 216, in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), in the Nālanda plate of Devapāla

(E. I. XVII at p. 321). In this last 'dāṇḍika' and 'dāṇḍapāsika' come immediately after one another.

✕ दाणक—Appears to be the same as 'dūtaka'. The word occurs in the grant of Paramāra king Siyakaḍeva dated *samant* 1026 (in E. I. XIX p. 177) and in E. I. XIX at p. 243 (dated *samant* 1005).

✕ दाताप्रधानिक—meaning doubtful. Probably an officer whose concern was with the ten *aparādhas* of which the king could take cognisance *suo motu*. The word occurs in the Nālanda plate of Devapāla (E. I. XVII at p. 321) and in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306). Vide p. 264 above for the ten *aparādhas*.

दिवपाल—Probably officers in charge of the borders of a kingdom. The word occurs in Nārada (Dr. Jolly's edition, *pariśiṣṭa* verse 17) q. by the Mit. on Yaj. II 271 and Kat. (813) q. by Aparārka p. 844.

दिविर—a clerk. The Rājat. VIII. 131 makes it clear that 'divira' was distinct from the 'kāyastha'. The word occurs in the Gupta Ins. No. 27 at p. 122 of Mahārāja Jayanātha in Gupta year 177 (where one of the donees is a *divira* Sarvavādha).

दिवीरपति (or दिविरपति)—chief of clerks. In the grant of Śīlāditya of the Gupta year 296 a certain officer is styled 'sāndhivigrahādhikṛta-divirapati' (E. I. XI p. 174 at p. 180); vide also Jesar plate of Śīlāditya in 357 Valabhi year (E. I. XXII p. 114 at p. 117) where a person called Mammaka is styled 'divirapati' and also *sāndhivigrahika-mahāpratihāra* and *sāmanta*.

दुःसाधसाधनिक—Vide दौःसाधसाधनिक below.

✕ दुर्गपाल—Superintendent of a fort. Vide p. 112 note 147 above.

✕ दुष्टसाधक—meaning uncertain. The word occurs in the Kahla plate of Soḍhadeva of *samant* 1134 (E. I. VII at p. 91).

दूत—Messenger, envoy. Vide Viṣṇudharmottara II. 24. 13-14, 28 for his qualifications and pp. 112, 127 above. In the 13th Rock Edit of Aśoka at Shahabazgadhi we have 'duta' (vide Corpus I. I. vol. I p. 67).

✕ दूतक—A high officer or delegate who conveys the king's command about the grant of land to local officers. The word occurs in the Betul plate of Saṅksobha in 199 Gupta year (Gupta Ins. pp. 286-289), and in the plate of Mahārāja Jayanātha of Gupta year 174 (Gupta Ins. No. 26 p. 117 at



p. 119 where the 'dūtaka' is Uparīkadikṣita Sarvadatta), in the Banskhera plate of Harsa in E. I. IV p. 208 (dūtakotra mahāpramātāra-mahāsāmanta-śrī-Skandagupta) and also in the Madhuban plate of Harsa (E. I. VII at p. 158). In the Daulatpur plate of Bhojadeva I in Harsa *samvat* 100 the dūtaka is said to be 'Yuvarāja-Nāgabhaṭa'. Vide also E. I. VI p. 285, E. I. VIII 287, XI p. 80. In the Khalimpur plate of Dharmapāla (in E. I. vol. IV p. 243 at p. 250) the king states that he was requested to make a grant by Mahāsāmantaśhipati Nārāyaṇavarman through the Prince Tribhuvanpāla as dūtaka.

दुतप्रेषणिक—Meaning doubtful. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306).

देशाधिकृत—(Prākṛit 'desadhikata')—Governor of a Province. The Prakrit form occurs in the Ins. of Pallava Śīvaskandavarman in the year 8 (E. I. vol. I at p. 5).

✓ दुःसाधसाधनिक—Meaning doubtful. Probably means 'those who catch dangerous robbers whom it is difficult to secure'. The word occurs in the Banskhera plate of Harsa (E. I. IV p. 208 at p. 211). The form 'duḥsādha-sāadhanika' occurs in the Sevadī plates of Oṣhamāna Ratnapāla in *samvat* 1176 (E. I. XI at p. 310). Vide also E. I. XXVI at p. 206 and 'mahāsāadhanika' below.

✓ दोसाधिक—Probably the same as above. The word occurs in the grant of Lakṣmanabasena in the 3rd year of his reign (i. e. 1122 A. D.) in E. I. XII at p. 9.

द्वारिक—Doorkeeper. Vide Kautīlya I. 12, Lalitavistara p. 136, Viṣṇudharmottara II. 24. 30.

✓ शनिक—Officer in charge of a city station or watch tower for collecting customs duties. 'Drāṅga' means either 'a town' (as in E. I. XX, No. 810 of *saka* 1509) or 'a watch station' (as in *Rajāt.* VIII. 2010). The word occurs in Valabhi plate of Dharaśena II in Valabhi *samvat* 252 (I. A. 15 p. 187), Gupta Ins. No. 38 at p. 169, Palitana plate of Śimhāditya in 255 Valabhi year (E. I. XI p. 16 at p. 18), Bhavanagar plate of Dhruvasena I in Valabhi year 210 (E. I. XV p. 257), Wala plate of Guhasena (E. I. XIII at p. 339), the Navalakhi plate of Śilāditya (E. I. XI at p. 179).

✓ शङ्केर—Guardian of frontiers. Vide Stein's translation of *Rajāt.* vol. II pp. 291-292 for the meaning of 'drāṅga'.

✓  
✓  
द्वारनाथ, द्वारपति, द्वाराधिप—Superintendent of passes leading into the kingdom (Stein). Vide *Rājat.* V. 214.

धर्मन्यायज्ञ—Superintendent of morality. Vide *Asoka's Edicts* in *Corpus I. I.* vol. I p. 96 (first Rock edict at Girnar).

धर्माधिकरण—Judge. Vide *Vāspudharmottara* II. 24, 24-25.

धर्माधिकरणिन्—Judge. Vide *Matsyapurāṇa* 215. 24 and note 167 above.

धर्माध्यक्ष—Vide p. 126 above.

घुव—Collector of the royal share of grain. The word occurs in the *Bhimnal Ins.* of *śāhūvat* 1320 (*Bombay Gazetteer*, vol. I part 1 p. 477).

घुवाधिकरणिन्—Probably the same as above. The word occurs in *Gupta Ins.* No. 38 pp. 164-166 (*Māliya plate* of *Dharmasena* II in *Gupta year* 252), the *Wala plate* of *Guhāsena* (E. I. VII at p. 339 of *Valabhi year* 246).

✓  
नगरपति—City Prefect. The word occurs in the *Śilāra grant* of *śaka* 1016 (*I. A.* vol. 9 p. 33 at p. 35).

✓  
नगरव्यावहारिक—City Magistrate. Vide *Kautilya* I. 12 for *Paura-vyāvahārika* and note 147 on p. 112 above. The word 'Nagalaviyohālaka' occurs in the First separate Rock Edict of *Asoka* at *Dhauli* (*Corpus I. I.* vol. I p. 92).

नगरभण्डारि—City Banker or guild president of the town. The word occurs in the *Damodarpur plate* No. 4 of the time of *Budhagupta* (E. I. XV at p. 115) and in the *Faharpur plate* (E. I. XX at p. 63).

✓  
नगराधिकृत or नगराधिप—City prefect. Occurs in *Rājat.* IV. 81, VI. 70, VIII. 3334.

नरपति—Exact function doubtful. The word occurs in the plate of *Jayacandra* of *Kanoj* in *śāhūvat* 1225 (*I. A.* vol. 15 p. 6 at p. 7) and in the *Panchobh plate* of *Saṅgrāmagupta* in *JBORS.* vol. V p. 582 at p. 588.

✓  
नागरक—Chief Officer of the city. The word occurs in *Kautilya* II. 36, *Kāmasūtra* V. 5. 9 (the com. on which explains *nāgaraka* as *daṇḍapālaka*). Vide p. 149 above for his functions.

✓  
नागरिक—Chief of the police. The word occurs in the *Vikramorvaśya* V (after verse 4), the *Daśakumāracarita* II. pp. 58 and 59. The *Vaijayanti* explains the word as 'kārapati, (Jail Superintendent).



नायक—Head of (ten) villages. The word occurs in Kautilya I. 12, Śukra I. 192.

नियुक्त—An officer, whose exact function is not known. The word occurs in the grant of Karka dated *śaka* 746 (E. I. XXIV p. 77 at p. 84), in the Kauthem plate of Vikramāditya V dated *śaka* 930 (I. A. vol. 16 p. 15 at p. 24), in the Rajor Ins. of Mathanadeva dated *śamvat* 1016 (E. I. III p. 263 at p. 266).

निहेल्पति—Governor of some part of a kingdom. In Chamka Ins. No. 15 p. 164 at p. 166 we read in Vīdagdha's plate 'Viṣaya-pati-nihelapati-kṣatrapa'. Vide Vogel p. 124. In Gupta Ins. No. 80 p. 286 at p. 289 the 'dūta' of the grant is 'nihilapati' Kuśala-prakāśa. So 'nihilā' and 'nihela' probably mean the same thing.

नैमित्तिक—Probably 'soothsayer or astrologer'. The word occurs in the plate of Candradeva of Kanoj of *śamvat* 1148 (E. I. IX p. 302 at p. 305).

पञ्चकुल—An officer over a certain number of villages. The word occurs in the grant of Arjunadeva of Anahillapāṭaka in Vikrama year 1320 (I. A. vol. 11 at p. 242, where we read 'Śrī-Abhayasthaprabhṛti-pañcakulapratipattau'), in the Bhinmal Ins. No. 12 dated *śamvat* 1333 (Bombay Gazetteer vol. I part I p. 480) where we read 'tan-niyukta-mahā-Gajasīha-prabhṛti-pañcakula-pratipattau'. In E. I. XXIV at p. 89 (in an Ins. from Udaipur) we have a Pañcoll of the Guḡhāvata family. Here, it appears that 'pañcakula' was a board of officers of whom Gajasīnha was one (or the chief). Vide महापाञ्चकुल below.

पञ्चसदस्य—A board of five officers or a *panchayat*. The word occurs in the Sanchi Stone Ins. of Candragupta II in Gupta year 93 (vide Gupta Ins. No. 5 at p. 31).

ग्रामिक—Village headman. The word occurs in the Malva plates of Vākpatirāja in *śamvat* 1031 and 1078 (I. A. vol. 6 at pp. 51 and 53), in the Māndhatā plate of Jayasīnha of Dhārā in *śamvat* 1112 (E. I. vol. III p. 46 at p. 48), in the plate of the Paramāra king Udayavarman of *śamvat* 1256 (I. A. vol. 16 p. 252 at p. 254). Vide p. 154 above for other references.

पटोलाचारा—Recorder of official documents. Vide *Rajāt*, V. 397.

पञ्चित—Vide note 150 above.

विशान्वेयिक—probably means 'an officer who drives away undesirable persons with a cane'. The word occurs in the plate of Mahābhavagupta I (E. I. XI p. 93 at p. 94).

पंडिकावित्त—Meaning uncertain. The word occurs in the Belava plate of Bhojavarmadeva (E. I. XII p. 37 at p. 40).

पुख—means 'inferior servant' (as in Kauṭilya II. 5) or a bailiff attached to a Court of justice (as in Br.). Vide p. 278 above.

पुरोहित—Vide pp. 111-112 and 117 above. The purohita occurs in the list of functionaries in the Candravati plate of Candradeva of Kanoj in *śāhvat* 1148 (E. I. IX at p. 305) and in the grant of Lakṣmāṇasena (E. I. XII p. 6 at p. 9).

पुस्तपाल—Keeper of land records. The word occurs in the Damodarpur plates dated Gupta year 124 and 129 (E. I. XV p. 113, at p. 130) and in the Paharpur plates (E. I. vol. XX. p. 61).

गरभ्यावहारिक—Vide p. 112 note 147 above. Compare 'nagala-vyohālaka' above under 'nagara-vyāvahārika'.

प्रतिनौक—Herald. This word occurs in Gupta Ins. No. 39 p. 171 at p. 190 dated 766-67 A. D. (The words are 'tan-niyukta-pratinartaka-kulaputrāmātya-Guhena').

प्रतिनिधि—Vide note 150 above.

प्रतिहार—Chamberlain or 'inditer of grants'. In Nasik Ins. No. 5 the word *pratihāra* (pratiḥāra) occurs (E. I. VIII p. 73). Bṛhaspati quoted by Viśvarūpa on Yaj. I. 307 states the qualifications of a 'pratiḥāra'. Vide Ādiparva 85, 28-29, Viṣṇudharmottara II 24, 12, Śukra I. 121 for definitions. In the grant of Dhruvasena dated Valabhi year 206 the *dūtaka* of the grant is *pratihāra* Mammaka.

प्रतीहार—Same as above. The form occurs in the Vasantaṅgaḍh Ins. of Varmalāta (E. I. IX p. 187 at p. 192), in the Candravati plate of Candradeva of Kanoj in *śāhvat* 1148 (E. I. IX at p. 305); in E. I. IX p. 117 at p. 119 Paramāra king Jayavarman II causes *pratihāra* Gaṅgadeva to give a village to three brāhmaṇas (in *śāhvat* 1317).

प्रथमकायस्थ—Chief scribe. The word occurs in the Damodarpur plate 1 of Kumāragupta in Gupta year 124 (E. I. XV at p. 130).

प्रेक्षु—Police Magistrate. Vide Kauṭilya I. 12, IV. 1, IV. 10 (last verse). The word occurs in the Irda plate of the



Kamboja king Nayapāladeva (of about the 10th century) in E. I. XXII. pp. 150 at p. 156.

प्रधान—Vide note 150 above. The word occurs in the Śilāra plate of Mahāmaṇḍaladeva Anantadeva (I. A. 9 p. 33 at p. 35 where 'mantrin', 'amātya' and 'pradhāna' are mentioned).

✓X प्रमातर—Vogel (pp. 122-123) holds that this officer was concerned with the administration of justice. The word occurs in the Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211).

✓ प्रमातृ—Probably 'civil judge'. The word occurs in the Nalanda plate of Devapāla (E. I. XVII at p. 321) and in the grant of Dhruvasena III in the Gupta year 334 (E. I. vol. I p. 85 at p. 88). Vide also E. I. vol. I at p. 115.

प्रवेष्टमानिक—Meaning doubtful. Stein conjectures that he is a subordinate officer of the treasury who received cash payments. The word occurs in Rājat VIII. 278.

✓X प्रशासु—Probably chief magistrate. The word occurs in Kauṭ. I. 12; vide p. 112 n. 147 above.

प्राणचर्य—Medical adviser to the king. Vide Viṣṇudharmottara II. 24. 33-34 for his qualifications.

✓ प्राह्विवर—Chief Justice. Vide Manu IX. 234 and p. 272 above.

प्रलिकारक—Meaning doubtful. The word occurs in the Valabhi grant of Dharaśena II dated Gupta year 253 (I. A. 15 p. 187).

प्रदेविक—(प्रदेविक)—An officer under Aśoka, probably the same as the mahāmātra. The word occurs in the 3rd Rock Edict of Aśoka at Gīrnar (Corpus I. I: vol. I. pp. 4-5).

प्रान्तपाल—Governor of a Province or guardian of the frontiers. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 p. 304, at p. 306) and in 'Antiquities of Chamba' Ins. No. 15 at p. 166. Vide Vogel p. 124.

प्रयोगवेदाधिकृत—Officer who watched those that had resolved to fast unto death. Vide Rājat. VI. 14.

✓ बलधिकृत—Commander of an army. The word occurs in the Kādambarī (para 74) of Bāṇa (where Balāhaka is so called) and in the Rāṣṭrakūṭa (Gujarat branch) grant of Śaka 679 (J. E. B. R. A. S. vol. 16 p. 105 at p. 108 where 'balādhikṛta' follows 'senāpati').

बाह्य—A class of royal servants (as distinguished from 'antaraṅga'). Vide Rājat. VIII. 426, 680, 1542.

बहुपरिक—Great Governor of a province. The word occurs in the grant of Lakṣmanasena (E. I. XII p. 6 at p. 9). See 'uparika' above.

भट्ट—The word occurs very frequently in conjunction with 'cāṭa' for which see above. Vide also Dudia plates of Pravara-sena II in E. I. III p. 258 at p. 261 and Banakhera plate of Harṣa (E. I. IV p. 208 at p. 211), grant of Śivaskandavarman (E. I. vol. I. p. 2 at p. 5) where 'bhāṭa' stands for 'bhāṭa'.

भोगद्वेष—Vide p. 112 above.

भोगहार—He who recovers the king's share of the produce of land; one of the six officers of each village, acc. to Śukra, II. 120.

भोगिक—Meaning uncertain. The word has something to do with 'bhāga' and 'bhoga' which frequently occur in the Gupta Inscriptions (e. g. 'bhogabhāgam' in Gupta Ins. No. 40 at p. 194 and No. 41 at p. 198). Vide two Talesvara plates (E. I. XIII, p. 109 at p. 115) and 'Antiquities of Chamba' (Ins. No. 15 p. 166) where both 'bhāgika' and 'bhogika' are found. Mr. Y. R. Gupta renders it as 'owner of land'. Vide Vogel p. 130.

भण्डागारप्रधान—The chief of the royal store-house or treasury. The word occurs in the Ambarnath Ins. of Manvāṇi in sake 782 (J B B R A S. vol. 9 p. 219).

भण्डागारिक—A storekeeper or keeper of royal treasury. The word occurs as 'bhaṇḍāgarikaya' ('bhaṇḍāgarikasya', of a store-keeper) in Nasik Ins. No. 19 (E. I. VIII p. 91) and in the Candrāvati plate of Candradeva of Kanauj dated 1148 (E. I. IX p. 302 at p. 305).

भिक्षु—King's medical adviser. Vide E. I. IX p. 302 at p. 305.

भोगपालि—Head of a district. It occurs in the Mitākṣarā ou Yāj. I. 320, in E. I. IX p. 296 at p. 298 plates of Śaṅkarakṣapa where we read 'anyairvāgāminipati-bhogapālībhīl', as contrasted with a king and in 'Antiquities of Chamba' Ins. No. 45 at p. 166.

भोगिक—Head of a district or Collector of the State share of land produce taken in kind (Bombay Gazetteer I part 1 p. 82). The word occurs in Gupta Ins. No. 21 p. 93 at p. 96 and No. 22 p. 106 at p. 104 (of the Gupta year 163), No. 23 p. 106 at p. 108 (of the Gupta year 191), in the Kavi grant of



Jayabhata about the beginning of 5th century A. D. (I. A. vol. V at p. 114), in the Taiesvara plates (E. I. XIII p. 109 at p. 117).

भोगोदरणिक्—The same as 'bhogika' above.

भोजक—A village headman or 'freeholder' (Buhler). The word occurs in the Deo Baranark Ins. of Jivitagupta II (Gupta Ins. No. 46 p. 213 at p. 216) and in the grant of Pallava Sivaskandavarman (E. I. vol. I p. 2 at p. 5).

मण्डलेक—'Lord of a mandala', a provincial governor. Vide *Rājat.* VI. 73, VII. 996, VIII. 1228, 1814, 2029.

मण्डलेभर—Same meaning as above. The word occurs frequently in the inscriptions of the Rattas of Saundatti. Vide *Bombay Gazetteer*, vol. 21 p. 354 and 'mahāmandaleśvara' below.

मतिसचिव—Counsellor. The word occurs in the Inscription of Rudradāman. Vide p. 105 above.

मन्त्रिन्—Minister or counsellor. The word occurs in *Kaṭṭ.* I. 8, *Yāj.* I. 312 and in *Candāvatī* plate of Candradeva of Kanoj dated *samvat* 1148 (E. I. IX p. 302 at p. 305). Vide pp. 105-106 and n. 150 above.

महत्तक—Meaning uncertain. The word occurs as Mahāmahattaka in the Bodhi Gaya Ins. dated in the 74th year of the Lakṣmana-sena-era (i. e. about 1194 A. D.) in E. I. XII p. 27 at p. 30.

महत्तम—Meaning uncertain. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 at p. 306) and the Rajor grant of Mathanadeva in *samvat* 1016 (E. I. III p. 263 at p. 266 where both 'mahattara' and 'mahattama' occur one after another) and in *Rājat.* VII. 438.

महत्तर—lit. meaning 'elder' (of a town or village). Stein on *Rājat.* VII. 659 translates it as 'chamberlain'. The word occurs in the Kavi plate of Jayabhata of the beginning of the 5th century A. D. (I. A. vol. V p. 114, 'rāstragrāma-mahattara'), Gupta Ins. No. 38 p. 164 at p. 169 (the Maliya plate of Dharasena II), Abhona plates of Śaṅkaragana (595 A. D.) in E. I. IX p. 297, Palitana plates of Śimbhāditya in the Gupta year 255 (E. I. XI pp. 16, 18), Valabhi grant of Dharasena II in Gupta year 252 (I. A. 15 p. 187). Vide also E. I. VIII p. 26 at p. 39 (śake 852), E. I. IV p. 278, 285 (śake 880), E. I. III p. 263, 266 (Vikrama year 1016), I. A.

vol. 16 p. 15 at p. 24 (śaka 930). In the Daśakumāra-carita III p. 77 there is 'janapada-mahattara'. Vide note 148 above.

महाकरणिक—Vide 'karanika' above. The word occurs in the Benares plate of Cedi king Karpadeva in Cedi era 793 (I. s. 1042 A. D.) in E. I. vol. II p. 297 at p. 309.

महाकर्ताकृतिक or महाकर्ताकृतिक—Meaning uncertain. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 p. 304 at p. 306) and in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and the Wala grant of Dhruvasena I in Gupta year 216 (I. A. vol. 4 p. 105).

महाकुमारामात्य—Vide 'Kumārāmātya' above. The word occurs in the same two plates as are mentioned under 'mahākartā-kṛtika'.

महाक्षत्रप—The great *satrap* or provincial Governor. The Mathurā Lion Pillar capital (Corpus I. I vol. II p. 30 at p. 48) and the coins of Rajula are the earliest to mention this word. Vide the Mathurā stone Ins. of Śopḍasa (E. I. IX p. 247) and Rudradāman's Ins. (E. I. VIII p. 36 at p. 44).

महाक्षपटलिक—Vide 'akṣapaṭatika' above. The word occurs in Gupta Ins. No. 39 at p. 120 (in 766 A. D.), in the Bhagalpur plate (I. A. 15 pp. 304, 316), Benares plate of Karpadeva (A. D. 1042) in E. I. vol. II p. 309, in Lakṣmanasena's grant (E. I. XII p. 91), E. I. X at p. 100 (Vikrama year 1253). In the Madhuban plate of Harṣa (E. I. VII p. 155 at p. 158) we have 'mahākṣapaṭalāśdhikarapāśdhikṛta'.

महानगवत्स—meaning uncertain. The word occurs in the Naihati grant of Ballālasena (E. I. vol. XIV p. 156 at p. 160).

✓ महातलवार—The functions of this high officer are not clear. See the Nagarjunikonda Ins. in E. I. XX at pp. 6 and 16 where a person is styled mahāsenāpati and mahātalavara. Has the word anything to do with the modern word 'talvar' meaning a sword? If it has then it would mean 'a great swordman'. The word 'taravāri' in the sense of a double-edged sword occurs in the Yaśastilaka I. p. 50.

X ✓ महादण्डनायक—Vide 'dandānāyaka' above and p. 115 note 152. In the Gupta Ins. No. 1 pp. 10, 15 Harīṣeṇa, the author of the *pratāpī*, is styled sāndhivigrahika, kumārāmātya and mahādandānāyaka; vide also Gupta Ins. No. 46 pp. 213, 216, Mathurā (Kusana) Ins. of the year 74 (E. I. IX p. 242), E. I. XVI p. 230 the Kankhera stone



Ins. of the year 201 (279 A. D.?) where we read 'mahādandanāyakena sakena śrīdharavarmānā', in Nāgarjunikopāśa Ins. (3rd century A. D.) in E. I. XX at p. 7; in the Wala grant of the Valabhi king Dhruvasena I in the Gupta year 216 there are five titles applied to Dhruvasena of which mahādandanāyaka is one (I. A. vol. 4 p. 105), the other four being mahāsāmanta, mahāpratihāra, mahākārtākr̥tika and mahārāja.

महादानपति—The great lord of gifts. The word occurs probably as a title only in the Taxila plate of Patika of the year 78 (Corpus I. I. vol. II p. 23 at p. 28).

महादानिक—Officer superintending the great gifts of the king called mahādānaś. For mahādānaś vide H. of Dh. vol. II pp. 869-870. The word occurs in the Kahla plate of Sodhadeva (E. I. vol. VII at p. 91).

महादेवी—The first wife of a king. The mahādevī or mahārājñī often heads the list of persons to whom royal grants are addressed. Vide Karpadeva's plate dated in 1077 A. D. (E. I. XI. at p. 141).

✓ x महादौःशब्दस्थानिक—Vide 'dauṣṣādhasādhanaika' above. The word occurs in Nārāyaṇapāla's plate (I. A. 15 p. 304 at p. 306) and Devapāla's Nālanda plate (E. I. XVII p. 310 at p. 321).

महाधर्माधिकरणिक—The chief justice. The word occurs in the Benares plate of Karpadeva in A. D. 1042 (E. I. II p. 309) and also in his Goharwa plate (E. I. XI p. 139 at p. 141).

महाधर्मावल्लभ—Vide 'dharmādhyakṣa' above. The word occurs in Lakṣmaprasena's grant (E. I. XII p. 6 at p. 9).

महापात्रकुलिक—Vide पञ्चकुल above. The word occurs in Saṅgrāma-gupta's Panchobh plate (JBORS. vol. V p. 582 at p. 588).

महापीडुपति—The great superintendent of elephants. Mahāpīḍu-pati Pāsūpata was the *dūtaka* of the Abhona plates of Kāṭaccuri Śaṅkaragana in Kāṭaccuri *śābana* 347 (i. e. 595-6 A. D.) in E. I. IX p. 296 at p. 298. The word also occurs in Lakṣmaprasena's grant (E. I. XII p. 6 at p. 9).

महाप्रतिहार—Superior officer above all doorkeepers, great chamberlain. The word occurs in the Kādambari of Bāpa para 97, in the Rājat. IV. 142. It occurs in the plates of Saṅgamasūriha (541 A. D.) in E. I. X p. 72 at p. 75, in the Jessar plate of Śīlāditya in 357 Valabhi year (E. I. XXII p. 117), in Gupta Ins. No. 46 pp. 213, 216, Benares plate of Karpadeva in 1042 A. D. (E. I. vol. II p. 309).

महाप्रधान—Great Minister (or Prime Minister). A mahāpradhāna and dandanāyaka Branmadeva is found in an ins. of Kalachurya Saṅkama's time in 1178 A. D. (E. I. V p. 26 at p. 28). Vide also E. I. XV p. 32 at p. 36, I. A. vol. 9 p. 33 at p. 35 (where a mahāpradhāna Mahādevaia under mahāmandaleśvara Anantadeva is mentioned in śaka 1016.)

महाप्रभु—Governor. Vide Ehūra record of 1173 A. D. (E. I. XII at p. 335).

महाप्रमत्तवार (महाप्रमातार)—Vide the Godharva plate of Karnadeva dated 1047 A. D. (E. I. XI p. 141).

महाप्रसातार—see प्रसातार above. The word occurs in the Banaskhera plate of Harsa (E. I. IV p. 208) and Benares plate of Karnadeva (1042 A. D.) in E. I. vol. II p. 297 at p. 309.

✓ महाप्रबन्धिकृत—Great commander. Vide Gupta Ins. No. 23 at p. 109 in 191 Gupta year, the same person being also the *dūtaka* of the grant; E. I. X at p. 72 (valabhi *satamat* 117 in Kumāragupta's reign), E. I. VI p. 294 at p. 299 (609-610 A. D.), E. I. XI at p. 83 (Maitraka grant of Gupta year 252), E. I. XII p. 30 at p. 35.

महामाण्डगारिक—Vide Bhāṇḍāgarika above. The word occurs in Karnadeva's Benares plate (in 1042 A. D.) in E. I. vol. II p. 39 and in his other plate in E. I. XI p. 141 (in 1047 A. D.). For the Mahābhāṇḍāgāra office, vide Rājat. IV, 142.

महामौनिक—Vide मौनिक above. Vide Lakṣmanasena's grant in E. I. XII p. 6 at p. 9.

महामण्डलनाथ—Same as mahāmandaleśvara. The word occurs in the Waghil ins. of Seuna dated śaka 991 (E. I. II at p. 227).

महामण्डलीक—Same as the next. Occurs in Śilāra plate of Anantadeva in śaka 1016 (I. A. vol. 9 p. 33 at p. 35).

महामण्डलेश्वर—Lord of a great territory. This title is borne by many of the Rattas of Saundatti (vide Bombay Gazetteer vol. 21 p. 354 for Belgaum), by Śilāhāra chiefs of the Konkan, by the Kadambas of Hangal and other cities and several other chiefs throughout central and south India. Vide E. I. XIII at p. 16 (for Rattas of Saundatti, 1204 A. D.), E. I. XIII p. 299 (for Kadamba Jayakesi II being so called in A. D. 1125), E. I. V p. 234 at p. 236 and p. 238, E. I. XII p. 250 (for Bhandup plates of Śilāhāra Chittarājadeva in 1026 A. D.), J B B R A S vol. 9 p. 219 (Ambarnath Ins. dated śaka 782), I. A. vol. 12 p. 119 (Bassein plates of



Yadava Seunacandra II, śake 991 ), I. A. vol. 11 p. 9 for Kakatiya Mahā-Rudradeva in śake 1084, E. I. VIII p. 205 for the Vaghela chiefs Lavanaprasāda and Viradhavala being called Mahā-, E. I. XIV pp. 265-66 ( Sinda chief Rācamalla II of Kurgod in śake 1095 and 1103 ), E. I. XIX p. 75 at p. 80 ( Hāhaya king Prthvideva I is styled Mahā- though he ruled over 20000 villages of Mahākosala.

महामन्त्रिन्—'Great Minister or councillor'. Occurs in the Benares plate of Cedi king Karpadeva (E. I. vol. II p. 309 in 1042 A. D.) and his Goharwa plate dated 1047 A. D. (E. I. XI p. 141 ).

महामहत्तक—Vide mahattaka above. The word occurs in the Bodhi Gaya Ins. dated in Lakṣmīpasena year 74 (E. I. XII p. 27 at p. 30 ).

महामहत्तर—Vide mahattara above. The word occurs in the Purie plate of Gangā year 149 (E. I. XIV p. 362, where we read ājñā mahāmahattara-Sīvasarmā.

महामहन्तक—Occurs in the Kahla plate of Sodhadeva in śaimvāt 1134 (E. I. VII p. 85 at p. 91 ).

महामात्र—'Great or Prime Minister'. Vide note 148 above and Vogel p. 122. Occurs in Ambarnath Ins. of śake 782 (J B B R A S, vol. 9 p. 219 ), Bhadana plates of Śīlāra Aparājita in śake 919 (E. I. III p. 267 at p. 290 ), plate of Karpadeva in 1042 A. D. (E. I. vol. II p. 309 ), I. A. vol. 11 p. 242 in Vikrama year 1320 equal to Valabhi year 945 where mahāmātyarājaka-Māladeva is said to have done all the business of the seal of Varaval Ins. of Arjunavarmadeva of Apahillapātaka and where a Mahomedan donor from Hormuz grants some income to a masjid built by him, Mussulman congregations of Somanātha being appointed trustees.

महामात्र—High Officer. Vide Kautīlya I. 12, V. 1 &c. and Kāmasūtra V. 5, 17, 33 and 35. The word occurs frequently in the Aśoka inscriptions e. g. the two separate Rock Edicts at Dhauī are addressed to the Mahāmātras of Tosali (Corpus I. I vol. I pp. 92, 95, 97, 99 and 175 ). In the Solagpur plate (of about 300 B. C.) also the 'Mahāmātras' of 'Savastrī are mentioned (E. I. XXII p. 1). In Nasik Ins. No. 22 in E. I. VIII p. 93 (about 1st Century B. C.) the word 'mahāmātrapa' is interpreted as mahāmātyena in Bombay Gazetteer vol. 16 p. 592, but it is better to take it as mahāmātrapa. Manu employs the word mahāmātrah

(in IX. 359, which Medhātithi explains as 'mantrins, purohita and others', while Kulluka explains it as meaning those whose profession is to tame elephants).

महामुद्राधिकृत—Officer in charge of the Royal seal. Occurs in the grant of Lakṣmanasena in E. I. XII p. 6 at p. 9.

महाराज—'King or feudatory'. This is not an official under a king, but in some inscriptions an emperor addresses his order as to a grant of land to 'mahārāja mahārājāt-mahārājaputra' &c. Vide Banekhara plate of Harṣa (E. I. IV p. 208 at p. 211).

महाराजपुत्र—'Great prince'—occurs in Benares plate of Karpadeva (E. I. vol. II p. 309 of 1048 A. D.) and his Goharwa plate in 1047 A. D. (E. I. XI p. 141) and Kahla plate of Sodhadeva in *samant* 1134 (E. I. VII p. 85 at p. 91).

महाराज्ञी—Vide E. I. VII p. 85 at p. 91.

महारायक—Vide I. A. vol. 18 p. 214 (of *samant* 1216).

महान्युदपति—'Chief Master of battle arrays'. Occurs in the plate of Bhujayarnadeva in E. I. XII p. 37 at p. 40.

महाभेष्टिन्—Great banker. Occurs in Kahla plate of Sodhadeva (E. I. VII pp. 85, 91).

महाभक्षाल—One of the five high offices instituted by Lalitāditya of Kashmir. Vide *Rajāt*. IV. 142.

महासमापनिक—Commander of a cavalry force. Occurs in the Benares and Goharwa plates of Karpadeva (in E. I. vol. II p. 309 and E. I. XI p. 141), Kharha plate of Yaśaḥkarnadeva (E. I. XII p. 205 at p. 213).

महासन्धिविग्रहिक—Great Minister of peace and war. Occurs in Benares plate of Karpadeva in 1041 A. D. (E. I. II p. 309).

महासन्धिविग्रहाधिकृत—Great minister of peace and war. Occurs in the Palltana plate of Dharaśena II in Gupta year 252 (E. I. XI p. 80), in plate of Buddharāja (E. I. VI at p. 299 in 609–10 A. D.), in the Pimpri plate of Dhruvarāja (E. I. X at p. 89) in śaka 697. In the Harṣacarita (VI) Harṣa is said to have dictated his proclamation of *digvijaya* to 'Mahā...krta' who sat near him. In E. I. IX at p. 290 (plates of Saṅkaragapa) and E. I. XII p. 30 at p. 35, we have 'mahāsandhivigrahaḍhikarāṇadhikṛta'.

महासामनिक—Great Commander. Occurs in Kahla plate of Sodhadeva in Vikrama 1134 (E. I. VII p. 85 at p. 91).



महासाधनभाग—One of five high officers instituted by Lalitāditya of Kashmir. Vide *Rajāt* IV. 142-43.

महासन्निविमर्दिह—Same as महासन्निविमर्दिह. Occurs in Gupta Ins. No. 22 p. 100 at p. 104 (the Khoh plate of Gupta year 163), the Ambarnath Ins. dated śake 782 (JBBRAS. vol. 9 p. 219), the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), E. I. XI p. 141, E. I. XII p. 6 at p. 9 (Lakṣmanasena's grant).

महासामन्त—Great chieftain. The Yādavas of Sindhnagara (vide E. I. II p. 217 of śake 922, I. A. 17 p. 120 of śake 948) and the Rattas of Saundatti were often so styled (Bombay Gazetteer vol. 21 p. 354). The Valabhi king Dhruvasena is called mahārāja and mahāsāmanta in E. I. XI p. 107 (in Gupta year 206) and E. I. XV at 256 (in Gupta Year 210) and E. I. XIX p. 302 and p. 304. The word occurs in the Banskhera plate of Harṣa in his 22nd year i. e. about 628-29 A. D. (E. I. IV p. 208, at p. 311) and in the Madhuban plate of the 25th year of Harṣa's reign (E. I. vol. I pp. 63, 67). Vide also Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 pp. 304, 306), Rāstrakūṭa grant of śake 679 (JBBRAS. vol. 16 pp. 105, 108), E. I. XV p. 85 in śake 981 (where one Nāgadeva is both mahāsāmantaśhipati and dandanāyaka of Someśvara I), E. I. vol. II p. 309 (Benares plate of Karpadeva).

महासामन्ताधिपति—Probably means the same thing as महासामन्त. In E. I. IV p. 259 one Bhogadevarāga is styled mahāsāmantaśhipati and dandanāyaka (Kelaṇḍi Ins. of the time of Someśvara I in 1053 A. D.), E. I. VI pp. 285, 292 (plate of Mahā-Dandivarman of Gujerat in śake 789), E. I. XX p. 61 (one Keśavayya is dandanāyaka and mahā- of Belvola 360 in śake 934), E. I. V p. 234, I. A. vol. 48 p. 1, E. I. IV. p. 243 at p. 250.

महासेनपति—Great Commander of armies. The word occurs in the Nasik Ins. No. 24. We have a mahāsenāpati Bhavagopa (E. I. VIII at p. 94) and in Nasik Ins. No. 3 of Vasīṭhiputa Śiripulamāvi (Bombay Gazetteer vol. 16 p. 556); In the Nagarjunikopla Ins. (of 3rd century A. D.) Chāntisiri is said to have been married to a person entitled mahāo and mahātalevara (E. I. XX p. 1 and pp. 6 and 16), in E. I. XII p. 6, 9 (Lakṣmanasena's grant).

मार्गपति—Guardian of frontiers or passes. Occurs in Nālanda stone Ins. of Yaśovarmanadeva's time about 530 A. D. in E. I. XX pp. 37, 41.

मार्गपाल—Same as above. Occurs in Nārada quoted by the Mīl. on Yāj. II. 271. Vide *dhikpāla* above for the reference.

याष्टक—'staff bearer', an attendant on a king. Vide Rajat. VI. 203. The word is derived from 'yaṣṭi' acc. to Pāp. IV. 4. 59 (meaning 'yaṣṭih praharapam-asya').

युक्त—An officer, whose exact function is not known; but in the inscriptions of Aśoka it is said that *yuktas* are to receive orders from the *pariṣad* (council of ministers). Vide the 3rd Rock Edict at Girnar (Corpus I. I. vol. I p. 4). The word also occurs in Kauṭilya II. 5 and 9.

युक्तक—Same as above. Occurs in the Cambay plates of Govinda IV in śaka 852 (E. I. VII pp. 26, 39) and the Karhad plates of Kṛṣṇa III of śaka 880 (E. I. IV. pp. 278, 285).

युवराज—Crown Prince. Occurs in Kauṭ. I. 12 among the 18 *virthas*. The word occurs in the Mathurā Lion pillar capital (Corpus I. I. vol. II p. 40) and in the Candrāvati plates of Candradeva of Kanoj (E. I. IX p. 302 at p. 304).

रजुक (or लजुक) or रजुक—An officer of land survey and revenue department. The word occurs (as *rajuka*) in the 3rd Rock Edict of Aśoka at Girnar in Corpus I. I. vol. I pp. 4-5 and in E. I. XXIV p. 52 (under Vakāṣaka Emperor Pravarasena II).

रहस्यविकृत—Private Secretary. The word occurs in the Pallava Śivaskandavarman's grant (E. I. vol. I p. 2 at p. 7), in the Vilavatti grant of Pallava Simhavarman (E. I. XXII p. 296 at p. 298), in a Kadamba plate (E. I. VI p. 13).

राजकुमार—A prince. Occurs in the grant of Śivaskandavarman (E. I. vol. I p. 2 at p. 3).

राजकुल—(modern Rāva! or Rāul). Vide E. I. XX Appendix No. 324 for the Ins. of mahāmaṇḍaleśvara-rājakula-Rapaśīdeva in Vikrama year 1223, E. I. XXV at p. 156 Mayūra-bhañja grant (where *rājakula* Heramba is said to be the *lekḥuka*).

सज्जुक—Occurs frequently in the Inscriptions of the Rattas of Saundatti (Bombay Gazetteer, vol. 21 p. 354 for Belgaum) and in the plate of Yādava Seupacandra (I. A. vol. 12 p. 119 at p. 120).



**गुरुन्**—Either a mere title or 'a founder'. This is often the first among the several persons addressed in several grants. The word occurs in Abhona plates of Śāṅkaragupta in 595 A. D. (E. I. IX p. 297), in the Candrāvatī plate of Candradeva of *samvat* 1148 (E. I. IX p. 305), in Lakṣmapāsena's grant (E. I. XII at p. 9). Vide Vogel p. 121.

**राजन्यक**—a kṣatriya chief. It occurs in Lakṣmapāsena's grant (E. I. XII p. 6 at p. 9).

**राजपुत्र**—lit. 'a prince', but in many inscriptions it has some technical meaning such as 'nobleman' or 'knight'. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321 where the order is 'rāja-rāpaka-rājaputra-rājāmātya'), in Gupta Ins. No. 46 at pp. 213, 216, Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 pp. 304, 306), in Lakṣmapāsena's grant (E. I. VII p. 6 at p. 9). Vide Vogel p. 121 and Fleet's note 1 on p. 218 of Gupta Ins.

**राजभेदिन्**—King's banker or chief of bankers. Occurs in Com. on Yaśastīlaka I p. 91. Vide note 148 above.

**राजस्थानीय**—Exact function uncertain. In Gupta Ins. No. 35 at p. 157 he appears to be a high officer, but a low one in Gupta Ins. No. 38 at p. 170. In the Rājat. VIII. 2618 he appears to be chief justice. Bühler in I. A. vol. V p. 207 takes the word to mean 'an officer who carries out the object of protecting the subjects'. In J. R. A. S. 1895 p. 382 rājas-thānīya Bhaṭṭī is the dūtaka of the grant. In the plates of Siṃhāditya in Gupta—Valabhi year 255 (574 A. D.) the order is 'rājaputra-rājas-thānīyāmātya'. Vide the Banekhora plate of Harsa (E. I. IV pp. 208, 211), Gupta Ins. No. 46 pp. 213, 216, Vasantagadh Ins. of Varmalāta in *samvat* 682 (E. I. IX p. 192), Palitana plate of Dharasena (E. I. XI p. 83), the Gujārat Rāstrakūṭa grant of sake 697 in J. B. B. R. A. S. vol. 16 pp. 105, 108, Vogel p. 122 and explanation in E. I. XI p. 176.

**राजानक**—A minister. The title occurs frequently in the Rājat. (vide VI. 117, 261). It was given for services to the king and survives in the form 'Rāzdān' as a family name among Kashmir brāhmanas. The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 pp. 304, 306), in the Parikud plate of Madhyama-rājadeva of Śailodbhava dynasty (E. I. XI pp. 281, 286). Vide Vogel p. 121 who

remarks that the vassals of the Chamba king designated themselves in this way.

राजमान्य—King's minister. In the Nasik Ins. No. 19 (E. I. VIII p. 91) this word occurs in the Prākṛit form 'rāyāmaca'. The word also occurs in Gupta Ins. No. 46 (pp. 213, 216), Nālanda plate of Devapāla (E. I. XVII at p. 321), Bhagalpur plate of Nārayanapāla (I. A. vol. 15 pp. 304, 306).

रानी—Queen. Vide Candravatī plate of Candradeva in *śāntat* 1148 (E. I. IX at p. 305), the grant of Lakṣmanasena in E. I. XII at p. 9 (the order being 'śeṣa-rāja-rājanyaka-rājāt-rāpaka-rājaputra-rājāmātya &c.) and the plate of Vijayasena (E. I. XV at p. 283).

राजक—A nobleman. Occurs in Nālanda plate of Devapāla (E. I. XVII at p. 321), in Lakṣmanasena's grant (E. I. XII at p. 9), in the Ins. of Kalacuri Narasiṃhadeva of Dāhala in Vikrama year 1216 (I. A. vol. 18 p. 214). Viṛadhavala and Lavapaprasāda of the Vāghela line are styled mahāmaṇḍalesvara and rāpaka in Abu Ins. No. 2 dated 1123 A. D. (E. I. VIII at p. 205). Vide J. B. O. R. S. vol. V p. 582 at p. 588.

राजकुट्ट—Head of a district (on the analogy of grāmakūṭa). Vide J B B R A S vol. 16 at p. 117.

राजपालि—Ruler of a province. The word occurs in E. I. VII p. 39 in 852 A. D., in the Karṇad plates of Kṛṣṇa III dated śaka 880 (E. I. IV pp. 278, 285), in the Kauteri plate of Vikramāditya V in śaka 930 (I. A. vol. 16 pp. 15, 24).

राजपाल—Head of a province. The word occurs in Kaut. V. I.

राष्ट्रिक—Ruler of a province. In the Prākṛit form 'ratthika' the word occurs in the grant of Śivaskandavarman (E. I. vol. 1 p. 2 at p. 5).

राष्ट्रिय—Ruler of a district or province. Vide p. 117 and note 155a above and Śāntiparva 85. 12.

रूपदर्शक—Examiner of coins. The word occurs in Kaut. II. 5, for which see note 184a. In E. I. XXII p. 30 there is a statement that in the Jogimara inscription rūpadakṣa (rūpadarśa or rūpadakṣa ?) occurs. Prof. D. R. Bhandarkar takes it to mean 'banker'.

लिपिकर—Writer of an edict or order. The word occurs in the Brahmagiri Rock Ins. in Corpus I. I. vol. I at p. 176. Pāṇini III. 2. 21 teaches the formation of 'lipikara'.



लेखक—Scribe or clerk in a public office. The word occurs in Nasik Ins. No. 16 and No. 26 (Bombay Gazetteer vol. 16 pp. 582 and 605), in the Visnudharmottara II. 24. 26-28, Sukra II. 120.

लेखहारक—Letter-carrier. Occurs in Rajat VI. 310.

लेखाधिकारिन्—A Secretary. Occurs in Rajat III. 206.

विद्याधिकारिन्—Director of education. In the Kondavidu Ins. one Śrinātha is said to have been the Vidyādhikārī of Vema in E. I. XI p. 313 at p. 314.

विनियुक्त—An officer, whose functions are not clear. The word occurs in the Bhavnagar plate of Dhruvasena I in 529 A. D. (E. I. XV p. 256), in the Valabhi grant of Dharasena II in Gupta year 252 (I. A. vol. 15 p. 187), in the Gupta Ins. No. 38 p. 164 at p. 169 (the Malliya plate of Dharasena II in Gupta year 252), the Bhagalpur plate of Nārāyanapāla (I. A. 15 pp. 304, 306).

विनियुक्त—Same as above. The word occurs in the grant of Dharasena II in Gupta year 252 (E. I. XI pp. 80, 83), in the Nālandā plate of Devapāla in E. I. XVII at p. 321 (where the word is preceded by 'syuktaku').

विषयपति—Ruler of a district. The word occurs in the Kavi grant of Jayabhata (I. A. 5 p. 114, in the beginning of the 5th century A. D.), in the Abhona plates of Śāṅkaragana in E. I. IX p. 297 (in 595 A. D.), in the Banakhara plate of Harsa (E. I. IV pp. 208, 211), in the Karhad plate of Kṛṣṇa III dated sake 880 (E. I. IV pp. 278, 285), in the Bhagalpur plate of Nārāyanapāla (I. A. 15 pp. 304, 306), in E. I. VII p. 39 (in 853 A. D.).

विषयेन्द्र—Same as above. The word occurs in the grant of Śivaskandavarman (E. I. vol. I at p. 5).

वीरिनहस्त—Probably elder of a vithal (a district). Occurs in a grant of Gupta year 120 (Indian Historical Quarterly vol. 19 p. 12 at pp. 15, 21).

वीरपात्रिक—'Person belonging to a military expedition'. The word occurs in Chamba Ins. Nos. 15, 25, 26. Vide Vogel p. 129.

वेदिक—Meaning uncertain, but it may mean 'bearer of a Vitika' (betel). It occurs in Chamba Ins. No. 15 at p. 166. Vide Vogel p. 123.

नेलावित्त—Meaning uncertain. The word occurs frequently in the *Rājat*. (V. 226, VI 73, 106, 127).

वेलेपिक—Function unknown. It occurs in E. I. XXVI at p. 206 (six Saindhava grants from Ghumli) of about 9th century A. D.

भवहासिन्—Meaning uncertain. It occurs in the plate of Jayanāga from Karga-suvarga (E. I. XVIII pp. 60, 63).

वज्रभूमिक—Superintendent of cowpens. It occurs in the 12th Rock Edict of Asoka at Girnar in the form 'vacabhūmika' (Corpus I. I. vol. I p. 20).

कन्यापाल or कन्यामहक—Guardian of the bed-chamber. Vide 'Inscriptions from Baroda' edited by Mr. A. S. Gadre p. 72 (a village was donated to a Nāgara-brāhmaṇa Prabhākara who was 'śayyāgrāhaka of Karpūradevi').

शरभङ्ग—It occurs in the Nalanda plate of Devapāla (E. I. XVII at 321) and in Chaumba Ins. No. 15 at p. 166 (where it is read as 'sarobhaṅga'. Vide Vogel p. 123 and 'Indian Culture' vol. VII p. 305 at p. 309. Has the word anything to do with the words 'sarayantra' and 'sarayantri'? The latter was a title bestowed in Mithilā upon a very learned man who faced the ordeal of answering satisfactorily all questions on any śāstra put to him by learned śācāryas and also the questions put by common people. Vide a paper 'Declaration of sarayantri', contributed to the All India Oriental Conference at Benares (in 1943) by Pandit Rāmānātha Jha of Darbhanga.

शुक्रप्राह—An official who recovered tolls or customs duties. Occurs in Śukra II. 120.

शौलिक—Superintendent of tolls or customs duties. The word occurs in Y4. II. 173 and in Gupta Ins. No. 12 pp. 50, 52. In the grant of Dharaśena II of Gupta year 352 (I. A. 15 p. 187), in Bhagalpur plate of Nārāyaṇapāla (I. A. 15 pp. 304, 306). Vide note on 'gaulmika' above.

श्रीकरण—A scribe. The minister Hemādri is styled 'sarvaśrīkaraṇa-prabhu'. Vide H. of Dh. vol. I p. 356 n. 849.

श्रीकरणाधिप or श्रीकरणाग्रणी—Head of all scribes or head of all departments. In E. I. XIII at p. 17 one Bhoṇa or Bhoṇāja is said to have been the Śrīka- of mahāmāṇḍaleśvara Kārtavīrya IV of Hangal. Hemādri is styled 'samastakaraṇādhipāra' or 'samastakaraṇādhipati'. Vide H. of Dh. vol. I pp. 356-357 notes 850-851.



भूतधिकृत—Officer who collected the royal share viz. 6th of the crops. It occurs in the Khalimpur plate of Dharmapala in E. I. IV. p. 243 at p. 250.

सचिव—Minister. Vide p. 105 and note 150 above.

सचिवनाक—A spy. It occurs in the grant of Sivaskandavarman (E. I. vol. I p. 2 at p. 5). In I. 12 Kautilya speaks of *sañcāras* (wandering spies like *likṣm*, *rusuda* &c.).

संयोजक—Vide p. 111 above.

सन्धिबिग्रहिक—Minister for peace and war. This form of the word occurs in Visnudharmottara II. 24. 17 and in Śāntiparva 85. 30.

संयोजक—The Superintendent of the construction of the royal treasury, store houses &c. The word occurs in Kauṭ. II. 5, I. 12 and in the plate of Mahābhavagupta (E. I. VIII pp. 138, 141 and E. I. XI pp. 93, 94). Vide p. 143 above.

समाह्वय—Collector-General. The word occurs in Kauṭ. I. 12 and II. 6, Śābana on Jai. XII. 1. 28 and in the plate of Mahābhavagupta (E. I. VIII at p. 141 and XI at p. 94). Vide p. 143 and note 184 above.

सर्वदण्डनायक—Commander-in-chief of all forces. The word occurs in I. A. vol. 8 p. 19, vol. 9 at p. 167, vol. 10 p. 129.

सर्वभिकारि—Prime Minister. Occurs in Rājat. VII. 568.

सर्वभिकारि—Probably the same as above. The word occurs in the Purie plate of Indravarman in the Ganga year 149 i. e. 605 A. D. (E. I. XIV pp. 360, 362).

संक्रिय—Astrologer. Occurs in Viṣṇu Dh. S. III. 75, Bṛhat-samhita 2. 9. Vide p. 126 above.

संक्रिय—Astrologer. Occurs in Pāṭhīnāsī. Vide note 193 above.

सचिवपाठ—Bailiff who summoned parties and witnesses. Vide p. 278 above.

सन्धिबिग्रहिक—Minister for peace and war. Occurs in Visnudharmottara II. 24. 17 and in the Mit. on Yaj. I. 320 (which quotes a verse to the effect that the 'sandhivigraha-kārin' is to issue a royal grant) and in Gupta Ins. No. 1 at p. 15 (the *prastāva* of Samudragupta).

सामन्त—feudatory chief. Under the Rattas of Saundatti certain high officials are often so called (Bom. Gazetteer vol. 21 p. 354 for Belgaum). The word occurs in Abhoma plates of

Śaṅkaragāna in 595 A. D. (E. I. IX p. 297), in Madhuban plate of Harsa (E. I. VII at p. 158), E. I. VI p. 298 (plate of Buddhārāja in 609-10 A. D.).

सहस्राधिवति—Occurs in Śukra I. 120.

सीमहर्षक—Officer who looked to the work of boundaries. Occurs in Gupta Ins. No. 46 pp. 213, 216.

सुमन्त्र—Vide p. 114 and note 150.

सुत—One of the *ratnas*. Vide p. 111 above.

सुपकास्पति—Head cook. The word occurs in Taleśvara plates (E. I. XIII pp. 109, 115).

सेनभोगिक—Meaning uncertain. It occurs in the plate of Danti-varman of Gujerat in śaka 789 (E. I. VI p. 385).

सेनापति—Commander-in-chief. Vide p. 127 above and Br. quoted by Viśvarūpa on Yaj. I. 307. Puṣyamitra, the founder of the Śunga dynasty and Bhatārka, the founder of the Valabhi dynasty, and his son Dharaeṇa were styled *senāpati*; vide I. A. 15 p. 187 (plate of Dharaeṇa II in Gupta year 352), E. I. vol. I p. 2 at p. 5 (grant of Pallava Śivaskandavarman), JBBRAS vol. 16 pp. 105, 108, E. I. IX at p. 305.

सीवर्षिक—State goldsmith. Vide pp. 144-145 above.

स्कन्दक—A petty officer, probably head of the village administration. Vide Rājat. V. 175.

स्वयम्भवनहामान—Officer superintendent of the harem. The word occurs in the 12th rock Edict of Aśoka in a prakṛit form (Corpus I. I. vol. I at p. 29).

स्वपति—Architect. Vide Viṣṇudharmottara II. 24. 39.

स्वपतिप्रसाद—Chief architect. Occurs in Karitalai plates of Mahārāja Jayanātha (Gupta Ins. No. 26 of the Gupta year 174 at p. 119).

स्वतन्त्रपाल—Officer in charge of a police post. Vide p. 149 above.

स्थानिक—An officer in charge of a ward of a city or a district. Vide pp. 143 and 149 above.

हस्त्यश्वोदबलव्यापृतक—Officers in charge of the elephant arm, cavalry, camel corps of an army. This occurs in Chamba Ins. No. 15 at p. 166. In the Nalandā plate of Devapāla (E. I. XVII at p. 321) we have 'hastyaśvostra-nau-bala-vyāpr-taka'.



NOTE 342 a—अत एवाह पितामहः ।

छलानि कपराधांश्च पदानि दृष्टेस्तथा । स्वयमेतानि यद्वासान्प्रस्तुतानेदकेर्देवा ॥  
पवित्राणी करारोमि प्राकारोपरिलक्ष्यकः । निपातस्त विनायी च तथा वाचयतस्थ च ॥ परि-  
क्षापूरकथैव राजच्छिद्रप्रमादकः ॥ अन्तःपुरं वासगृहं भाषागारं महानसम् । प्रविशत्यनिवृत्तो  
यो भोवनं च निरीक्षते ॥ दिव्यप्रश्लेषकतानां क्षोणुकामो नृपाग्रतः । पर्यङ्कासनधन्या नाप्य-  
ग्रस्थाननिरोधकः ॥ राजोऽतिरिक्तमेव विदुः प्र विद्येत्तु यः । यथापहारेण विवेद वेद्यायां  
तथैव च ॥ क्षण्यमाने पादुकयोः क्षयनाशनरोहणम् (रोहणे ?) । राजन्यासभसयने वस्तिष्ठति  
समीपतः ॥ राज्ञो विद्विष्टतवी चाप्यदत्तविहितासनः । कञ्जानरचयोधैव सुवर्णपरिधायकः ॥  
स्वयंम्राष्ट्रेण ताम्बूलं यद्वाहा मधवेत्तु यः । अनिवृक्तप्रभायी च नृपाकोशक एव च ॥ एक-  
वासास्तद्वान्मन्त्रो मुक्तकेतोऽङ्गमुत्थितः । विचित्रिताङ्गः समीपे परिधानविधुत्तकः ॥ सिर-  
प्रच्छादनयैव सिद्धान्वेषणतत्परः । आसङ्गी मुक्तकेशश्च यत्र कर्णाक्षिकशोकः (दर्शकः ?) । दन्तो-  
हेतुनकथैव कर्णनासाविशेषकः । छलान्वेतानि पञ्चाङ्गद्वयानि नृपासन्निधौ ॥ quoted in  
स्मृतिच. II. pp. 27-28, लङ्कनीति. IV. 5. 73-82 (except the name and  
the first verse) with variant readings.

NOTE 492—

नार्धसम्बन्धिनो नासा न सहस्रा न वैरिणः । न हृष्टदोषाः प्रहृष्टाः साक्षिणः प्रतिद्विष्टाः ॥  
दासैर्नकृतिकाभाद्वृद्धजीवाल्लक्षिकाः । मत्तोन्मत्तप्रमत्तार्तकितवप्रमत्तगजकाः ॥  
महापथिकसामुद्रकभिक्षुप्रवाजतातुराः । व्यङ्ग्यैकश्रोत्रिवाचारीतद्वीचकुर्वालिवाः ॥  
नासिक्कवत्पदांगमिनागिनोऽप्याजगजकाः । एकस्त्रीसहस्रामारिचक्रातिरसनाभयः ॥  
प्रागृष्टदोषैश्चैवविषयैश्चद्विद्विष्टकाः । गरदामिदकोनाशशत्रुपुत्रीपपातिकाः ॥  
क्रान्तसाहसिकप्रान्तनिर्वैमान्साधसाधिनः । भिन्नवृत्तासमाहृतवर्जलैकभूलिकाः ॥  
भूताविष्टपद्मिष्टकर्मगणप्रभूतकाः । अपराधस्वात्मविकेन्दुहीनाङ्गभयवृत्तयः ॥  
कुलजी दयामात्र ? दन्तश्च मित्रप्रभू सट्शौण्डिकाः । ऐन्द्रजालिककुल्योऽप्रदेषीगणविरोधिनः ॥  
कणकधर्मकृत्यहृत्तः पतितः कूटकारकः । कुहकः प्रत्यवसितस्तत्करो राजपुरुषः ॥  
सनुषपशुमासास्त्रिमडुनारम्भुसर्पिणाम् । विक्रेता ब्राह्मणयैव द्विजो सार्धपिकव यः ॥  
च्युतः स्वधर्मात्कुलिकः स्तापको हनितेवकः । पित्रा विषदमानश्च भेदहृच्चैत्यसाक्षिणः ॥  
नारद (कुणादान 177-187)

NOTE 509—

मत्तो मुण्डः कपालेन भिक्षायां क्षुद्रिगसितः । अन्यः सन्गृहं गच्छेयः साधवमनृतं वदेत् ॥ १  
मत्तो मुण्डः कपालेन परदारं बुभुक्षितः । अमित्रान्भूयसां (सर्?) पश्येयः साधवमनृतं वदेत् ॥ २  
यां राजमिषिविवा कीं यां चैवाक्षपराजितः । यां च भारामितसाङ्गे दुर्विषयका स तां वसेत् ॥ ३  
साक्षी साक्षे समुद्दिशन्गोक्ष्णोऽश्विजं वक्त्रः । सहस्रे वक्ष्यान्पञ्चाङ्गमुद्ग्रे स कथनानुद्गमम् ॥ ४  
तस्य वसेत्ते पूर्णं पात्र एव प्रमुच्यते । तदा पाशाद्विनिर्मुक्तः कीं संभवति मानवः ॥ ५  
एवं संकथनात्तस्मान्मुच्यते नियताच्च सः । पशुगोश्वपुष्पाणां हिरण्यं भूयैवाकम् ॥ ६  
यावती बान्धवास्तस्मिन् इन्ति साधवेनृतं वदन् । तावतः संभवेयामि ह्येष सौम्यानुपवेशः ॥ ७  
पञ्च परवृत्ते इन्ति दश इन्ति तवावृत्ते । शतेमवावृत्ते इन्ति सद्वत् पुष्पावृत्ते ॥ ८  
इन्ति जातानजाताश्च हिरण्यावृत्तं वदन् । सर्वं भूयनृतं इन्ति भास्व भूयनृतं वदी ॥ ९

एकमेवाद्वितीयं तत्माहुः प्रावृत्तमात्मनः । सर्वं स्वर्गस्य सोपानं पारावारस्य नीतिव ॥ १०  
 अथमेवसहस्रं न सत्यं च तुल्या भूतम् । अथमेवसहस्रात् सत्यमेव विज्ञायते ॥ ११  
 सर्वं कृपशताद्विषं सर्वं वापीपातात्कृतुः । सर्वं क्रतुशतात्सुतः सत्यं पुत्रशताद्वरम् ॥ १२  
 नृर्वास्यति सत्येन सत्येनोदेति मास्करः । सत्येन वायुः श्वरो सत्येनापः सन्ति च ॥ १३  
 सत्यमेव परं दानं सत्यमेव परं तपः । सत्यमेव परो धर्मः लोकानामिति नः भूतम् ॥ १४  
 सत्यं देवाः समासेन मनुष्यास्तकृतं स्मृतम् । इहैव तस्य देवत्वं यस्य सत्यं स्थिता मतिः ॥ १५  
 सत्यं ब्रह्मद्वयं त्यक्त्वा सत्येन स्वर्गमिष्यसि । उक्त्वाभूते महाधैरं नरकं प्रतिपत्स्यसे ॥ १६  
 नरकेषु च ते शशजिह्वामुक्तस्य दाहनाः । अग्निभिः शार्तामिष्यन्ति बलिनो यमकिङ्कराः ॥ १७  
 शूलैर्भैरव्यन्ति चाकम्ब कोशन्तमपरायणम् । अवस्थितं समुत्कृत्य क्षेरमन्ति त्वां हुताशने ॥ १८  
 अनुमूय च तास्तीवाधिरं नरकवेदनाः । इह यास्यसि पापायु शूद्रकाकादिवीनिषु ॥ १९  
 शाल्वैतानभूते दोषावशान्ना सत्ये च सन्तुषान् । सत्यं वदोद्धरात्मानं नात्मानं पातय स्वयम् ॥ २०  
 न बान्धवा न सहृदो न धनानि महान्त्यपि । अलं धारयितुं शक्तास्तमस्युप्रे निमज्जतः ॥ २१  
 पितरस्त्यक्त्वलम्बन्ते त्वयि साक्षित्वागते । तारयिष्यति किन्त्वस्मान् (किन्त्वस्मान् ?) किं चाद्यं  
 पातयिष्यति ॥ २२  
 सत्यमात्मा मनुष्यस्य सत्ये सर्वं प्रतिष्ठितम् । सत्यमुक्त्वात्मनात्मानं श्रेयसा संमिष्योजय ॥ २३  
 यस्यां रात्रावजनिष्ठा यस्यां रात्रौ मरिष्यसि । क्वा तदन्तरं तुभ्यं साक्ष्यं वेदनया क्वाः ॥ २४  
 ब्रह्माश्रयं तु ये लोका ये च स्त्रीबाह्यातिमान् । ये च लोकाः कृतव्रस्य ते ते स्तुब्धपथो क्वाः ॥ २५  
 नास्ति सत्यात्परो धर्मो नाभूतात्पातकं परम् । साक्षिधर्मं विशेषेण सत्यमेव नदेततः ॥ २६  
 पुराणोक्तो द्वौ लोको भवतः । यः परार्थे अदिष्टयात्सां वाचं पुरुषाधमः । आत्मार्थं किं न  
 कुर्वीत पापो नरकनिर्भवः ॥ २७  
 वाच्यार्थो नियताः सर्वे बाह्पूला दाम्बिनिधिताः । यो हि तां स्तेभ्येद्वार्चं स सर्वस्तोयकृपराः ॥ २८  
 नारद ( ऋणादान 201-228 )

Seven verses out of these occur elsewhere also. Verse 1 is the same as Manu 8. 93 and Vas. 16. 33; verse 3 is the same as Udyoga 35. 31; verses 7-9 are the same as Manu 8. 97-99, while verses 8-9 are the same as Udyogaparva 35. 33-34 and verse 8 occurs also in Band. Dh. 8. I. 10. 35 and Vas. 16. 34; verse 11 is the same as Ādīparva 74. 103, Śāntīparva 162. 26 and Anuśāsana 75. 29; verse 25 is almost the same as Manu 8. 89.

NOTE 1168 on पटस्कोट—

अविनीवतोऽपान्त्यकर्म विहितं यथा प्रायश्चित्ताभिच्छोः पतितस्य पटस्कोटे । तथाहि । महापातकेनोपातकेन वा पतितो यदि प्रायश्चित्तं न करोति तदा नै गुरुणा बान्धवानां राक्षस यमसमाहूय तत्कारं प्रकटीकृत्य तं पुनः पुनश्चादिशेत् प्रायश्चित्तं कुरवाचारं लभस्वेति । स यद्येवमपि नाहो करोति तदा रिचादिभिर्न्यतिथौ नायाह्वे सपिण्डा बान्धवाश्च सम्भूय दासी-इस्तेनानीतमभ्यकुक्षितजलादिपूर्वाघटं सर्वतो दाम्स्याधन्वारम्भं कुर्वन्तो दास्या दातव्यं वा कामपादेन न्युद्वं छिन्नाप्रदर्भेषु कारयित्वा दासीसहिता नद्येधुमुममुदकं करोतीति नामप्रवृत्त-पूर्वकं प्राचीनपीतितो मुक्तशिन्धाश्च सन्तः । ततोऽधिकारी कर्ता दाहवर्जं जीवन्तमेवोदित्य पिण्डोदकदानादिश्रेतकार्थोपेकादशाहान्तायि नाम्नेव कुर्वीत् । मितालस्यां श्रेतकार्थोत्तरं पट-



निगमनमुक्तम् । एकाहमाद्यौ च सर्वेषाम् । यस्य पटस्फोटः कृतस्तेन सह सम्भाषणस्फोटोदि-  
संगमो न केनापि कार्यः । करणे पतितकुञ्चता । चर्मसिन्धु, परिच्छेद III, उत्तरार्धे p. 453.  
This is a summary of a longer passage on the same subject  
from the निर्णयसिन्धु, परिच्छेद III उत्तरार्धे p. 567.

As to taking back into the social fold a man who  
repents after ghataasphota is performed the following pro-  
cedure is prescribed in the Dharmasindhu:

कृतपटस्फोटस्य पुनोन्मत्तपि तत्प्राप्त्यधिरान्तो संग्रहविधिश्चरते । तत्रादीं क्षुदिपरिक्षा ।  
कृतप्राप्त्यधिरातिशयं गोमयनृणभारं दद्यात् । गोमिस्तुषे भक्षिते क्षुदिः । भक्षणाभावे  
पुनः प्राप्तिं करोत् । एवं निश्चितसंशयो समानिपुनैर्बध्नात् । ईमे वा मृगमं वापि पवित्रमल-  
पुरितम् ॥ ततः सपिण्डास्तं घटे संस्पृश्याभिमन्त्र्य तज्जलेः पावनानीभिरपोहिष्ठ्यादिभिस्तर-  
त्समन्दोभिश्च पापिणमभिधेय्य तेन सह सर्वं स्नात्वा तं जलपटमस्मि दधुः । स च शान्ता योः  
शान्ता पृथिवी शान्ते विश्वमन्तरिक्षे यो रौचनस्तमिह पृथ्वासीति यजुर्मिस्ते घटे पृथ्वायात् ।  
ततस्तदुदकं तेनैव साकं सर्वं पिबेयुः । ततः स कृष्णाष्टमन्त्रैराज्यहोमं कृत्वा शुक्लं गां च  
दद्यात् । ततस्तस्य जातकर्मोदिस्रजवन्धान्ता विवाहान्ता वा संस्काराः कार्याः । एवं कृते कृदेन  
तेन संस्पृशे संभोजनादिव्यवहारे कुर्यात् । एवमुपगतके महापातके च कृतपटस्फोटस्य आदि-  
ज्ञेया । इति संक्षेपतः कृतपटस्फोटकृतिः । चर्मसिन्धु III उत्तरार्धे p. 454. The निर्णय-  
सिन्धु ( III उत्तरार्धे p. 568 ) has a similar but more elaborate note,  
quotes and relies on Gant. 20, 10-17, Mann XL 186, Yaj. III.  
295, Vas. 15, 17-21, the Mit., Aparārka and Hemādri.

NOTE 1302—The वी. पृ. दीपसूत्र ( II 6. 1-10 ) is as follows :—

अथातः पुत्रप्रतिमङ्कल्पे व्याख्यास्यामः । शोणितहस्तसम्भवे मातृपितृनिमित्तकस्तस्य  
प्रदानपरित्यागविकल्पे मातापितरौ कर्तारौ भवतो न त्वेकं पुत्रं दद्यात्प्रतिगृहीयाद्वा स हि  
सन्तानाय पूर्वेषाम् । न तु त्वौ पुत्रं दद्यात्प्रतिगृहीयाद्वाप्राप्त्यनुष्ठानाद्धतुः । पुत्रं प्रतिगृहीणान्पु-  
त्ररूपमते—द्वे वाससी द्वे कुण्डले अङ्गुलीयकं चाचार्यं च वेदपारंगं कुशमयं बर्हिः पर्णमयमिष्म-  
मिति । अथ वनभूतां मध्ये राजानि चापेच पार्षपदि वागारमप्ये वा ब्राह्मणान्तेन परिविध्य  
पुण्यादौ स्वस्मृदमिति काचयेत्वाप देवयजनोद्देशेन प्रवृत्त्यापगतान्यः कृत्वा दातुः समीपं  
गत्वा पुत्रं मे देशेति भिक्षेत ददामीतीत्य आह । तं पुत्रं प्रतिगृह्णाति धर्माय त्वा गृह्णामि सन्तत्यै  
त्वा गृह्णामीति । अथैनं वस्त्रकुण्डलान्यामङ्गुलीयकेन चालङ्कृत्य परिधानप्रवृत्त्यामिमुखात्कृत्वा  
पक्ताच्छुनोति । ' वस्त्रा इदं कोरिषा मन्ममानः ' इति पुरुषोक्तावबामन्त्र्य ' यस्मै त्वं सुकृते  
जातवेदः ' इति वाग्मया जुहोति । अथ आज्वाहुतीस्सप्तहोति-व्याहृतिभिर्हुत्वा त्विष्टकृत्य-  
भूति सिद्धमन्त्रेणुदप्रदानात् । अथ दक्षिणां ददात्येते एव वाससी एते एव कुण्डले एतच्चाङ्गु-  
लीयकम् । यद्येवैकते औत्सः पुत्र उत्पद्यते तुरीयमप्येव भवतीति ह स्माह सगवान्योपासनः ।  
This is quoted in the दत्त सौ. pp. 152-153, सं. सौ. p. 177, चर्मसिन्धु III  
पूर्वार्धे p. 161 (partly) and Bühler published it with a translation in  
the Journal of the Bengal Asiatic Society vol. 35 pp. 161-164.

NOTE 1302—

शौनकेऽहं प्रवक्ष्यामि पुत्रसङ्ग्रहमुत्तमम् । अउत्रो मृतपुत्रो वा पुत्रार्थं समुपैष्य च ॥ १  
 काससी कुम्भले दत्ता उष्णीषं चाहुसौयकम् । आचार्यं चमेतुवुक्तं वैष्णवं वेदप्रारम्भम् ॥ २  
 मधुपर्केण संपूज्य राजानं च द्विजाञ्छनीन् । बर्हिः कुसमर्चं चैव पादाशं चैभमेव च ॥ ३  
 एतानाहृत्य बन्धून् श्राद्धीनाहूय बलतः । बन्धून्नेन संनोज्य ब्राह्मणांश्च विशेषतः ॥ ४  
 अन्वाधानादि यत्तन्त्रं कृताञ्जोत्यवगादिकम् । दातुः समर्घं गत्वा तु पुत्रं देहीति याचयेत् ॥ ५  
 दाने समर्घो दातास्मै ये यजेतेति पयानिः । देवस्तं त्येति मन्त्रेण हस्ताभ्यां प्रोतेयञ्च ॥ ६  
 अङ्गादङ्गेत्सु च वस्त्रा चाग्राय शिशुमूर्धनि । ब्रह्मादिभिरलङ्कृत्य पुत्रच्छायाकं सतम् ॥ ७  
 कृत्यगीतैश्च वाद्यैश्च स्वस्तिकन्दैश्च संतुतम् । शुभन्ये तमादाय चरं कृत्वा विधामतः ॥ ८  
 यस्त्वा हृदेत्सूया चैव तुभ्यमग्रं चैवेकया । सोमो दददित्येताभिः प्रत्युर्न पचाभिलथा ॥ ९  
 स्विष्टकृदादिवोमं च कृत्वा शेषं समापयेत् । ब्राह्मणानां सपिण्डेषु कर्तव्यः पुत्रसंग्रहः ॥ १०  
 तदभावेऽसपिण्डो वा अन्यत्र तु न कारयेत् । शशियाणां स्वजातौ वा गुल्फोत्रसमोपि वा ॥ ११  
 वैष्णवानां वैश्यजातेषु शूद्राणां शूद्रजातिषु । सर्वेषामेव वर्णानां जातिष्वेव न चान्यतः ॥ १२  
 दौहित्रो भागिनेश्च शूद्रस्यापि न दीयते । ब्राह्मणादिभ्यो नास्ति भागिनेयः सुतः कश्चिद् ॥ १३  
 नेकपुत्रेण कर्तव्यं पुत्रदानं कदाचन । बहुपुत्रेण कर्तव्यं पुत्रदानं प्रयत्नतः ॥ १४  
 दक्षिणां भुख्ये दद्याद्यथाशक्तिं द्विजोत्तमः । कृषो राधार्पणेकापि वैद्यो वित्तशतत्रयम् ॥ १५

श्रुतः सर्वस्वमेवापि अलक्षयेद्यथावत् ॥ १५

The above text of Śaunaka is based on the *व्यव. मयूख. नि. सि.* ( which does not quote all verses ), *दत्त. मी.*, *दत्त. च.*, *सं. की.* and Dr. Böhler's text prepared from several mss. and published in the *Journal of the Bengal Asiatic Society*, vol. 35 at pp. 158-159. The *शौनकीय* text printed at Trivandrum, 1935, has 14½ verses on पुत्रसङ्ग्रहविधि (I 8). The principal various readings are noted below. Verse 1—*सं. की.* reads 'कन्या वा मृतपुत्रा वा'; *शौ.* reads कन्यो वा. The half verse 3a मधुपर्केण &c. is omitted by Böhler, *व्यव. मयूख. नि. सि.*, *सं. की.* In 5a *दत्त. मी.* and *दत्त. च.* read अन्वाधानादिकं यत्तं, and *शौ.*, *सं. की.* and Böhler अन्वाधानादि; and *शौ.* reads 'सवनान्दकम्'. In 6a *शौ.* reads समक्षयो ददेतस्ते. The *नि. सि.* omits 7b and 8a and *सं. की.* reads छत्र-छायागतं सतम् in 7b and *शौ.* छत्रछायाकम्. In 8b *सं. की.* and *शौ.* read शुभमेत्येभमापाय. In 9a *सं. की.* and *शौ.* read यस्त्वा हृदेति द्वान्वा च and in 10a स्विष्टकृदादिवोमं च कृत्वा होमं. In 11b *दत्त. मी.*, Böhler and *दत्त. च.* read गुल्फोत्रसमेपि. In 13a Böhler and *सं. की.* read दौहित्रं भागिनेयं वा शूद्राणां चापि दापयेत्; *दत्त. मी.* reads शूदेस्तु क्तिवते सुतः and also recognises the reading शूद्राणां विहितः सुतः. The *सूत्रिमु.* (वर्णाश्रम) p. 102 and *शौ.* read दौहित्रं भागिनेयं वा शूद्राणां त्वापदो यदि and omits ब्राह्मणादि... कश्चिद्. 13b (ब्राह्म. ... कश्चिद्) is omitted by the *व्यव. मयूख.*, *सं. की.* and Böhler. In 15b *सं. की.* and *शौ.* read रत्नशतत्रयम्. The order of the verses also slightly varies in some of the works.



NOTE 1751—वनपर्व 188. 30-64

महत्मान्ते नराः सर्वे प्राक्प्रवृत्तवादिनः । बद्धप्रतिनिधिः पार्थ दानप्रतिनिविस्तथा ॥ ३०  
 बद्धप्रतिनिधिश्चैव तस्मिन् काले प्रवर्तते । ब्राह्मणाः शूद्रकर्माणस्तथा शूद्रा घनार्जकाः ॥ ३१  
 क्षत्रधर्मेण धाम्प्य बर्तयन्ति गते युगे । निवृत्तपक्षस्थाभ्यां दण्डाजिनविचरिताः ॥ ३२  
 ब्राह्मणाः सर्वमज्ञानं भविष्यन्ति कलौ युगे । अजपा ब्राह्मणास्तात शूद्रा जपपरायणाः ॥ ३३  
 विपरीते तदा लोके पूर्वैर्यं क्षयस्तथा । बहवो म्लेच्छराजानः पृथिव्यां मनुजाधिप ॥ ३४  
 नृपाजुजासिनः पापा मृगमादपरायणाः । आन्ध्राः शकाः पुलिन्दाश्च स्वनाम्न नराधिपाः ॥ ३५  
 काम्बोजा बालिकाः क्षुरास्तथाभीरा नरोत्तम । न तदा ब्राह्मणः कश्चित्स्वधर्ममुपनीयति ॥ ३६  
 क्षत्रियाणां च वैश्यानां विकर्मस्था नराधिप । अत्यायुषः स्वपक्षलाः स्वलवीर्यपराक्रमाः ॥ ३७  
 अल्पसारावपेक्षाश्च तथा सत्यात्मभाषिणः । बहुश्रुत्या जनभदा मृगव्याजकृता दिशः ॥ ३८  
 युगान्ते समनुप्राप्ते वृथा च बद्धवादिनः । भोवादिनस्तथा शूद्रा ब्राह्मणाधर्मवादिनः ॥ ३९  
 युगान्ते मनुजव्याघ्र भवन्ति बहुजन्तवः । न तथा क्षाण्युक्ताश्च सर्वगन्था विद्यापते ॥ ४०  
 रसाश्च मनुजव्याघ्र न तथा स्वादुबोमिनः । बहुप्रजा ह्रस्वदेहाः क्षीलाचारविचरिताः ॥  
 सुलोभगाः क्षियो राजन् भविष्यन्ति युगक्षये ॥ ४१  
 बहुश्रुत्या जनभदाः शिक्शालाश्चतुष्पथाः । केशशलाः क्षियो राजन् भविष्यन्ति युगक्षये ॥ ४२  
 अल्पवीरास्तथा गावो भविष्यन्ति जनाधिप । अल्पपुष्पफलश्चापि पादपा बहुवायसाः ॥ ४३  
 ब्रह्मव्यानुलिप्तानां तथा मिथ्याभिर्वांसिनाम् । नृपाणां पृथिवीपाल प्रतिपृच्छन्ति वै द्विजाः ॥ ४४  
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A few important readings have already been noted in the text and notes there. The most extensive lists of Kalivarjyas occur in Sm. Cl., Hamādrī (pariśeṣakhanda, vol. III. part 2 pp. 666-668), Par. M. vol. I part 1 pp. 134-137, Madanaratnapradīpa (Samayanirṇaya) Ms. No. 146 of Vis. collection I (now in the Govt. Mus. Library at B. O. R. Institute, Poona), Udvāha-tattva (p. 112-113) and Śuddhī-tattva pp. 273-274 (Jiv.), Nirṇaya-sindhu, Samayamayūkha, Bhaṭṭoji on Caturvīṃśatimāta and Smṛti-kaustubha. Detailed explanations are given in the last four of these and in Kṛṣṇabhaṭṭa's com. on the Nir. 8.

2. Some works such as the कलिवर्ज्यवि. read समाप्ते निवृत्तानि, which कलिवर्ज्यवि. explains as जनमेजययज्ञसमाप्तौ and कृष्णमह. on नि. वि. p. 1292 explains similarly.

4. मदन्तरप्रदीप (folio 209a) reads बालायाश्चतयोन्वाय.

18. The समयप्रकाश reads 'सर्वर्णानां तथा दुष्टैः संसर्गः' &c.

20-21. These are omitted in स्मृतिच., परा. मा., उद्वाहृतत्त्व and some other works, though found in हेमाद्रि, महोजि, कलिवर्ज्यवि. and निर्णयसिन्धु.

26. स्मृतिमुक्ताफल (आह्निक p. 447) reads भोग्याश्रया कलौ नास्ति तीर्थसेवा च दुरतः.

33. महोजि and कलिवर्ज्यवि. read विधिबोदिता for मुद्रा.

38. परा. मा., समयमयूल p. 109, कलिवर्ज्यवि. and महोजि read वज्रसार्व-  
गृह्यत्वं च.

42-45. These are omitted by many of our authorities, though they occur in हेमाद्रि, समयमयूल, स्मृतिकौ., समयप्रकाश.

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